TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 166.

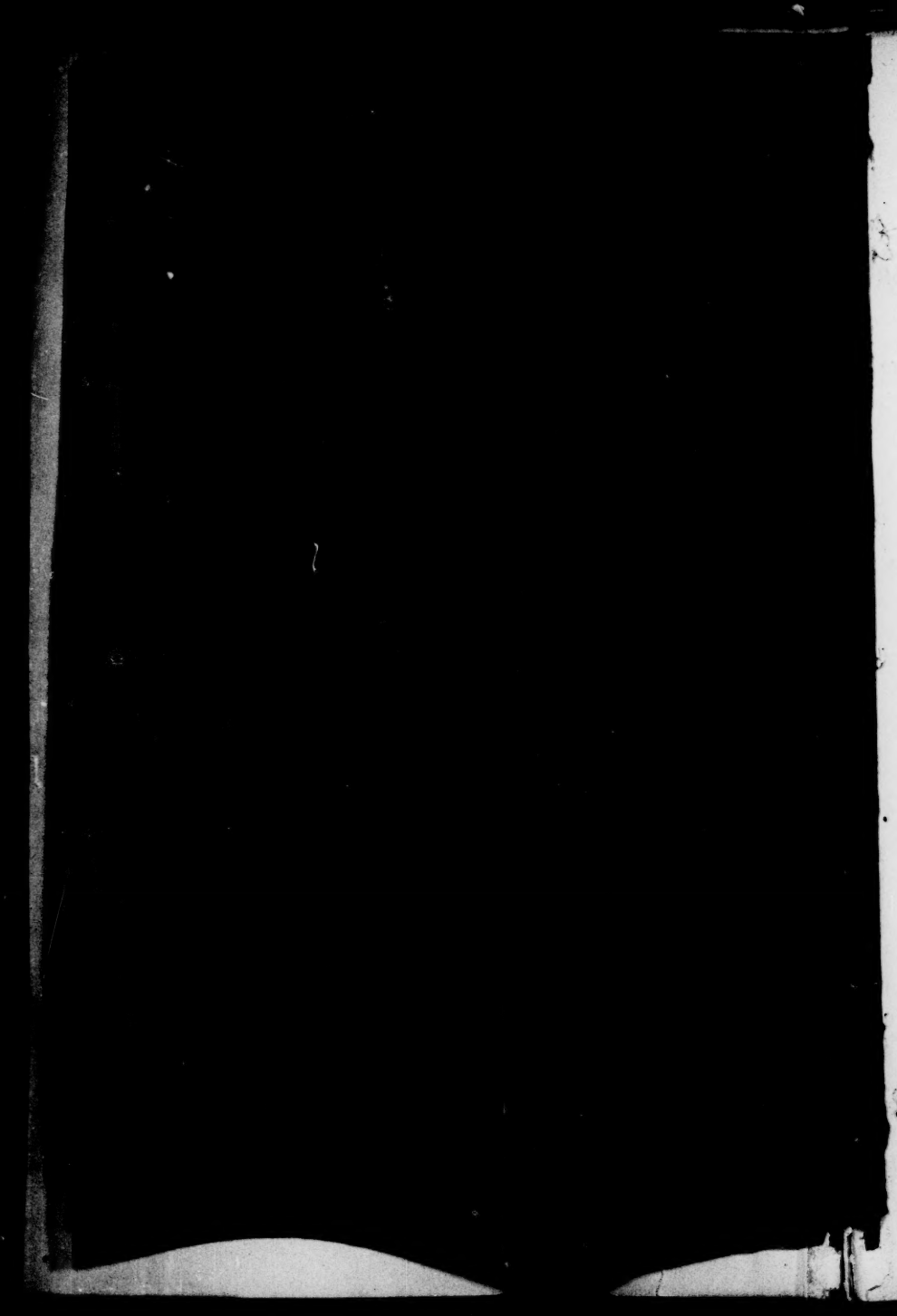
THE CONSOLIDATED FRUIT-JAR COMPANY, APPELLANT,

vs.

JAMES T. WRIGHT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 16, 1876.



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INDEX.

	Original.	Print.
Subpœna	*a*	1
Bill of complaint	1	1
Answer	7	5
Replication	13	8
Exhibit A, (complainant's)	14	8
B, (complainant's)	21	12
C, (complainant's)	25	14
D, (complainant's)	27	15
COMPLAINANT'S TESTIMONY.		
Admission that complainant is duly incorporated	29	16
Testimony of A. A. Vermilyea	30	16
Thomas J. Mould	31	17
Horatio Reed	39	21
Charles G. Frampton	48	26
Homer Brooke	52	29
Eliza A. Mason	59	33
Charles W. Gray	61	34
Eliza W. Fitzgerald	64	36
Joseph Bagot	67	37
John A. Lefferts	71	40
Robert Franklin	74	41
Stephen R. Pinckney	81	45
Henry Mitchell	83	46
Stephen R. Pinckney, (recalled)	88	49
John L. Mason	89	50
Complainant's exhibit "Mason's file-wrapper"	157	88
Appeal from decision of examiners-in-chief, &c.	159	89
Testimony of William A. Leavitt	170	95
Salmon B. Rowley	188	104

	Original.	Print.
Testimony of Thomas G. Otterson	203	112
Charles Yockel	215	118
William L. Imlay	219	120
Newell Imlay	228	125
Albert T. Zeising	235	129
James J. Christie	239	131
Defendant's exhibit No. 4	245	134
No. 5	245	135
No. 10	251	138
No. 11	252	139
No. 13	254	139
No. 14	254	140
No. 15	255	140
No. 16	267	147
No. 17	270	149
No. 18	270	149
No. 19	271	150
No. 20	272	150
No. 10	273	151
No. 20	275	152
No. 21	276	153
No. 22	277	153
No. 23	277	153
No. 24	279	154
No. 26	280	155
No. 34	280	155
No. 35	283	157
No. 39	288	159
No. 41	292	161
No. 42	296	164
No. 43	302	167
No. 44	303	168
No. 47	308	170
Cause heard	329	182
Decision of Judge Woodruff	331	182
Decree	335	187
Petition of appeal	337	187
Bond on appeal	341	188
Order as to exhibits	343	189
Citation	344	189

a [L. S.] The President of the United States of America to James T. Wright, greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of July, A. D. 1874, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by the Consolidated Fruit-Jar Company, and to do further and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty on you of two hundred and fifty dollars.

Witness Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, at the city of New York, on the tenth day of June, in the year one thousand eight hundred and seventy-two, and of the Independence of the United States of America the ninety-sixth.

KENNETH G. WHITE, *Clerk.*

A. J. TODD,
Comp't's Sol'r.

The defendant is required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of July, 1872, or the bill will be taken pro confesso against him.

K. G. W., *Clerk.*

b STATE OF NEW YORK,
City & County of New York:

James H. Hunter, being duly sworn, says that on the 10' day of June, 1872, he served the within subpœna on the within-named James T. Wright, at his place of business in the city of New York, by handing to and leaving with him a copy thereof; and that he knows the person so served to be the person named in the paper served.

JAMES H. HUNTER.

Subscribed & sworn before me at New York City this 11th day of June, 1872.

SAM. TRO. SMITH,
Notary Public, New York County.

I hereby depute James H. Hunter to serve the within writ.

GEORGE H. SHARPE,
U. S. Marshal.

JUNE 10, 1872.

Served as per above affidavit.

GEO. H. SHARPE,
U. S. Marshal.

AUG. 6, 1872.

Circuit court of the U. S., southern district of New York. In equity.

THE CONSOLIDATED FRUIT-JAR COMPANY
versus
JAMES T. WRIGHT.

To the honorable the judges of the circuit court of the United States in and for the southern district of New York.

The Consolidated Fruit-Jar Company, a corporation organized under

the laws of the State of New York, and doing business in the city of New York, brings this its bill of complaint against James T. Wright, doing business in said city of New York.

And thereupon your orator complains and says that on the 10th day of May, 1870, John L. Mason, being a citizen of the United States, and the original and first inventor of a new and useful improvement in fruit-jars, fully described in letters-patent issued to him therefor, as hereinafter stated, and not known or used by others before his invention thereof, and not at the time of his application for letters-patent therefor in public use or on sale with his consent and allowance, and having made due application and having fully and in all respects complied with all the requisitions of the law in that behalf, did obtain letters-patent
of the United States for said improvement, dated on said 10th
2 day of May, and numbered 102913, signed by the Secretary of the Interior and countersigned and sealed with the seal of the Patent-Office by the Commissioner of Patents, whereby there was granted and secured according to law to the said John L. Mason, his executors, administrators, and assigns, for the term of seventeen years from the 10th day of May, 1870, the full and exclusive right and liberty of making, using, and vending to others to be used, the said improvement, as in and by said letters-patent, now here in court and ready to be produced, as this honorable court shall direct, will more fully appear.

And your orator further shows unto your honors that by an instrument in writing, made and entered into between the parties on the seventeenth day of February, one thousand eight hundred and sixty-nine, and bearing date on said day, the said John L. Mason did grant unto the Mason Manufacturing Company, of the city of New York, the exclusive right to make, use, and sell the said improvement during the term of the letters-patent subsequently issued therefor by the United States, which said instrument was duly recorded in the Patent-Office of the United States.

And your orator further shows unto your honors that on the twenty-fifth day of January, 1872, the said Mason Manufacturing Company, by an instrument in writing, under its seal, and bearing date on said last-named day, sold, assigned, and transferred to the Consolidated Fruit-Jar Company all its right, title, and interest in and to the said improvement and letters-patent issued therefor, and said exclusive license above set forth, which said instrument was duly recorded in the Patent-Office of the United States.

And your orator further shows unto your honors that, on the twenty-ninth day of January, 1872, by an instrument in writing, bearing date and executed on said last-mentioned day, the said John L. Mason sold, assigned, and transferred to the Consolidated Fruit-Jar Company all his
remaining right, title, and interest in said invention and letters-
3 patent issued therefor, which said instrument was duly recorded in the Patent-Office of the United States.

And your orator further shows unto your honors that since the date of the said two last-mentioned transfers your orator the Consolidated Fruit Jar Company's exclusive right under said letters-patent has been generally acquiesced in and acknowledged by the public, and that, except for the doings of the defendant and his confederates, as hereinafter set forth, and a few other infringers, your orator has been in exclusive possession and enjoyment of the right aforesaid, and that said exclusive right has been and is of great value to your orator, to wit, of the value of fifty thousand dollars, and that your orator will realize and receive

large gains and profits therefrom if infringements thereof by the defendant and his confederates shall be prevented.

And your orator further shows unto your honors that immediately after the said John L. Mason and the said Mason Manufacturing Company became as aforesaid vested with the aforesaid sole and exclusive right, they put into practical operation the aforesaid invention, and manufactured the aforesaid improvement in fruit-jars, according to said invention and said letters-patent; and since the transfers aforesaid to your orator, the said Consolidated Fruit-Jar Company has expended and invested considerable sums of money and bestowed great labor in and about said invention, and the carrying on of the business of manufacturing and selling said improvement in fruit-jars, and making the same useful to the public and profitable to your orator, and has made large and frequent sales to many different purchasers, and has continued the same prior to the commencement of this suit.

And your orator further shows unto your honors that the defendant above named, after the said two last-mentioned transfers to your orator, and before the commencement of this suit, having full knowledge of the premises and the rights secured to your orator as aforesaid, and in
4 violation of your orator's said exclusive right and privilege, and utterly disregarding the same, has, since the date of the letters-patent aforesaid, and the transfers to your orator hereinbefore recited, in the city of New York and district aforesaid, and at various places in the United States, unlawfully and wrongfully manufactured, used, and sold, and still continues to manufacture, use, and sell fruit-jars, embracing the improvement and invention described in the said letters-patent, or caused the same to be done, and is threatening to, and is about still further to continue the same, and is depriving your orator of sales of said invention and discovery, and is injuring the market and diminishing the demand for said improved fruit-jars, to the great damage and injury of your orator.

And your orator further shows unto your honors that the said defendant has derived and received, and is still deriving and receiving from the aforesaid making, using, and selling of said invention, large gains and profits; but how many of said fruit-jars, embracing said improvement, have been so made, used, and sold by said defendant, or what amount of such gains and profits has been derived and received by said defendant, your orator does not know and cannot set forth, but prays that said defendant may be required to make a disclosure of all such making, using, and selling, and of all such gains and profits.

To the end, therefore, that the said defendant may under oath, in due form of law, full answers make to all the allegations of this bill, and to each of them, and especially that he may set forth and answer the following interrogations:

First. Whether he has manufactured, used, or sold, since the date of the transfers aforesaid, fruit-jars embracing the improvements described in the specification of said letters-patent of May 10th, 1870;

Second. Whether he has manufactured, used, or sold fruit-jars in which there was a shoulder to receive a rubber gasket outside and a little below the top of the jar, a cover with the rim extending down outside of the top to press upon the said gasket, and a screw-ring with screw-threads operating upon screw-threads on the jar below the
5 gasket aforesaid, and causing the rim of the cover to press upon the rubber gasket, making thereby an air-tight joint;

Third. Whether he has on hand a quantity, or how many fruit-jars

embracing the elements aforesaid, in the combination mentioned in the last interrogatory;

And that the defendant may answer the premises, and may be compelled by decree of this court to account for and pay over to your orator all such gains and profits as may have accrued or arisen to, or been received by reason of the aforesaid making, using, and selling of the said invention and discovery, and all such gains and profits as your orator would have received but for the said infringements and the said wrongful and unlawful acts of the said defendant, and the damages suffered by your orator from the said defendant's wrongful and unlawful acts, and such increase thereof as to the court may seem just and proper, and that the said defendant, his attorneys, solicitors, servants, agents, and workmen, and each and every of them, may be enjoined and restrained by an injunction to be issued out of this honorable court, from directly or indirectly making, using, selling, working, or in any manner putting into practice, operation, or use, or in anywise counterfeiting or imitating said invention or discovery, or any part thereof;

And that a provisional injunction may be granted against said defendant in this cause, and such other relief as the equity of the case may require and to your honors may seem just and proper:

May it please your honors to grant unto your orator not only a writ of injunction conformable to the prayer of this bill, but also the writ of subpœna directed to the said James T. Wright, commanding him to be and appear before this honorable court, then and there to do and receive what to your honors may seem just and proper:

CONSOLIDATED FRUIT-JAR COMPANY,
By STEPHEN R. PINCKNEY,
Its Vice-President.

A. J. TODD,
Solicitor and of Counsel for Complainant.

6 The defendant is required to answer each of the foregoing interrogatories, numbered one to three inclusive.

A. J. TODD,
Complainant's Solicitor.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on the tenth day of June, in the year 1872, before the subscriber, a notary public in and for the county of New York, State of New York, duly commissioned and sworn, personally appeared Stephen R. Pinckney, vice-president of the Consolidated Fruit-Jar Company, and made oath, according to law, that he had read and understands the contents of the foregoing bill subscribed by him, and that all the matters therein stated are true of his own knowledge, except those matters therein stated to be on information and belief, and as to those matters he believes it to be true.

SAM. TRO. SMITH,
Notary Public, New York.

7 Circuit court of the United States for the southern district of New York. In equity.

THE CONSOLIDATED FRUIT-JAR COMPANY
versus
JAMES T. WRIGHT.

The answer of James T. Wright, defendant, to the bill of complaint of the Consolidated Fruit-Jar Company, complainant.

This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception that can or may be taken or had to the many errors, uncertainties, insufficiencies, and imperfections in said bill of complaint contained, for answer thereto, or unto so much thereof as he is advised it is material or necessary for him to make answer unto, answering, says:

That he does not know and is not informed, save by said bill of complaint, whether or not the said The Consolidated Fruit-Jar Company, complainant therein, is a corporation organized under the laws of the State of New York, doing business in the city of New York, and leaves said complainant to make such proof thereof as it may be advised is material or necessary.

This defendant, further answering, admits that letters-patent of the United States were, on the 10th day of May, 1870, issued to John L. Mason upon his application therefor, but denies, on information and belief, that said application and issue were made under the circumstances and on the conditions set forth in the bill of complaint; and this defendant,

8 for greater particularity, denies, on information and belief, that said Mason was the original and first inventor of the alleged new and useful improvements in fruit-jars described in said letters-patent, and on information and belief denies that said improvement was not known or used by others before his alleged invention thereof, and denies that at the time of his application for letters-patent therefor said improvement was not in public use or on sale with his consent or allowance, and whether or not said applicant fully and in all respects complied with all the requirements of the law in that behalf the defendant does not know and is not informed, save by said bill of complaint, and leaves the complainant to make such proof thereof as it may be advised is necessary and material.

This defendant, further answering, says, that he does not know and is not informed, save by said bill, whether or not the said Mason, by an instrument in writing dated the 17th day of February, 1869, granted unto the Mason Manufacturing Company, of the city of New York, the exclusive right to make, use, and sell the said improvement during the term of the letters-patent subsequently issued, and does not know and is not informed, save by said bill, whether or not the said Mason Manufacturing Company on the 25th day of January, 1872, by an instrument in writing, sold, assigned, and transferred to the Consolidated Fruit-Jar Company all its right, title, and interest in and to the said improvement and letters-patent issued therefor; and does not know and is not informed, save by said bill of complaint, whether or not the said Mason on the 29th day of January, 1872, by an instrument in writing, sold, assigned, and transferred to the Consolidated Fruit-Jar Company all his remaining right, title, and interest in said alleged invention and letters-patent issued therefor; wherefore this defendant leaves the complainant to make such proof of said instruments, or any of them, as it may be advised is necessary or material; but this defendant denies, on

information and belief, that said Mason or his assigns are, or ever
9 were, rightfully possessed of the exclusive right and liberty of
making, using, and vending to others to be used, said alleged improvement patented as aforesaid.

And this defendant, further answering, on information and belief, denies that since the date of the said two last-mentioned assignments the alleged exclusive right of the Consolidated Fruit-Jar Company has been generally acquiesced in and acknowledged by the public, and denies that said company complainant has been, as set forth in the bill herein, in exclusive possession and enjoyment of the said alleged right, and as to what, if any, value such alleged exclusive right is or has been to the complainant, this defendant does not know and is not informed, save by said bill, and leaves the complainant to make such proof thereof as it may be advised is material.

The defendant, further answering, says that he has no knowledge or information as to whether or not the said Mason, or the said Mason Manufacturing Company, ever put the aforesaid alleged invention into practical operation and manufactured said alleged improvement in fruit-jars, or whether or not the complainant herein has expended considerable or any sum of money or labor in carrying on said business, or whether or not it has made frequent sales to many different purchasers prior to the commencement of this suit or at any other time, and leaves the complainant to make such proof thereof as it may be advised is material or necessary.

This defendant, further answering, says that he has never made and does not now make fruit or other jars of any kind, but he admits that he has sold, since the 25th day of January, 1872, is now selling, and has on hand, some few fruit-jars in which there is a shoulder to receive a rubber gasket outside and a little below the top of the jar, a cover with the rim extending down outside of the top, to press upon the said gasket, and a screw-ring with screw-threads operating upon screw-threads on the jar below the gasket aforesaid, and causing the rim of the cover to press upon the rubber gasket, making thereby an air-tight
joint; but this defendant denies, upon information and belief,
10 that he has ever been engaged in the manufacture, use, or sale of
fruit-jars of which or of any substantial or material part of which the said Mason was the original and first inventor.

This defendant, further answering, says that he is advised, and therefore on information and belief avers, that if John L. Mason ever had any right to a patent for the improvement specified as his invention in said letters-patent, dated May 10, 1870, and alleged to have been made by him, or any right to have the same secured to him by letters-patent, he abandoned and forfeited the same and lost all such right by his delay in applying for letters-patent, and by laches, and by the same having, before his application for letters-patent therefor, been invented and patented by others, and having been invented and put into public use by others with the knowledge, consent, and allowance of said Mason.

And this defendant, further answering, on information and belief, avers, that for more than two years prior to the application of said Mason for the letters-patent aforesaid, the alleged improvement specified therein as his invention was in public use and on sale in this country with the consent and allowance of said Mason.

And this defendant, further answering, on information and belief, denies that said John L. Mason was the original and first inventor of the alleged improvement in fruit-jars specified as his invention in the said letters-patent dated May 10, 1870, but avers that long before any in-

vention thereof by him, the same, or substantial and material parts thereof, were known to and used by the persons and parties following, to wit: W. T. Gilbert, at Lockport, New York, and elsewhere, who now resides at said Lockport; Thomas J. Otterson, at Millville, New Jersey, and elsewhere, who now resides at Philadelphia, Pennsylvania; Charles J. Imlay, at Philadelphia, Pennsylvania, and elsewhere, who now resides at said Philadelphia; Samuel B. Rowley, at Philadelphia, Pennsylvania, and elsewhere, who now resides at said Philadelphia; John F. Bodine, at Williamstown, New Jersey, and elsewhere, who now resides at said Williamstown; W. W. Lyman, at Meriden, Connecticut, and else-
11 where, who now resides at said Meridan; John Focer, and Whitney Brothers, at Glassborough, New Jersey, and elsewhere, both of whom now reside at said Glassborough; William F. Gillender and Edwin Bennett, at Philadelphia, Pa., and elsewhere, of whom the said Bennett now resides at Baltimore, Md., and the said Gillender is deceased; John Adams, at Birmingham, Alleghany Co., Pennsylvania, who now resides in said Birmingham; A. P. Brooke, at New York City, and elsewhere, who now resides in New York City; and others in divers parts of the United States, whose names and residences, and where they had such prior knowledge and use, defendant craves leave to add to his answer when he shall be fully and particularly advised of the same.

And this defendant, further answering, on information and belief, avers that the alleged improvement specified as the invention of said John L. Mason, in letters-patent dated May 10, 1870, or substantial or material parts thereof, were, before the said alleged invention thereof by said Mason, described and contained in letters-patent of the United States granted to Thomas G. Otterson, dated November 4th, 1862, which were re-issued June 9th, 1868, and December 20th, 1870; also in letters-patent of the United States granted to Charles G. Imlay, dated May 23d, 1865, antedated December 6th, 1864, which were re-issued March, 1869; also in letters-patent of the United States granted to S. B. Rowley, dated December 14, 1869; also in letters-patent of the United States granted to John Focer, dated June 12, 1866; also in letters-patent of the United States granted Gillender & Bennett, dated August 8th, 1865; also in letters-patent of the United States granted to W. W. Lyman, dated December 28, 1858; also in letters-patent of the United States granted to W. S. Gilbert, dated December 17, 1861, which were re-issued September 1, 1868.

And this defendant prays the same benefits of the facts and things herein set forth as if for the reason thereof the said bill had been demurred to where a demurrer would have been proper, and the same benefit thereof as if they had been specially pleaded to the said bill.

12 And this defendant submits to this honorable court that said complainant has no right to any further answer to said bill, or any part thereof, than is hereinbefore contained, and no right to any injunction, account, or other relief prayed for in said bill, and this defendant prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JAMES T. WRIGHT.

GEORGE GIFFORD,
Solicitor and of Counsel for Defendant.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this 2d day of September, 1872, before me personally appeared James T. Wright, the above-named defendant, who, being by me duly

sworn, deposes and says that he has read the foregoing answer subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

[SEAL.] WM. CLITUS WITTER,
Notary Public, N. Y. Co.

13 United States circuit court, southern district of New York. In equity.

THE CONSOLIDATED FRUIT-JAR COMPANY
versus
JAMES T. WRIGHT.

The replication of the Consolidated Fruit-Jar Company, complainant in this cause, to the answer of the said defendant James T. Wright.

The complainant, saving and reserving to itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for application thereunto, says, that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this complainant; without this, that any other matter or thing whatever in the said answer contained, material or effectual in the law to be replied unto, and not herein or hereby replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this complainant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its bill it has already prayed.

A. J. TODD,
Solicitor and of Counsel for Complainant.

14 *Complainant's Exhibit A.—J. G., jr., ex'r.*

United States Patent-Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters-patent granted John L. Mason, dated May 10th, 1870, No. 102913, for improvement in fruit-jars.

In testimony whereof I, J. M. Thacher, Acting Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this twenty-fifth day of April, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-seventh.

[SEAL.] J. M. THACHER,
Acting Commissioner.

No. 102913.

The United States of America to all to whom these letters-patent shall come:

Whereas John L. Mason, of New York, New York, has alleged that he has invented a new and useful improvement in fruit-jars, and has made oath that he is a citizen of the United States, that he verily believes he is the original and first inventor or discoverer of the said im-

provement, and that the same hath not, to his knowledge and belief, been previously known or used, has paid unto the Treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor:

15 These are, therefore, to grant to the said John L. Mason, his executors, administrators, or assigns, for the term of seventeen years from the tenth day of May, one thousand eight hundred and seventy, the full and exclusive right and liberty of making, using, and vending to others to be used, the said improvement, a description whereof is given in the annexed schedule and made a part of these presents.

In testimony whereof I have caused these letters to be made patent and the seal of the Patent-Office to be hereunto affixed.

Given under my hand, at the city of Washington, this tenth day of May, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States of America the ninety-fourth.

[SEAL.]

W. T. OTTO,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent-Office.

SAML. S. FISHER,
Commissioner of Patents.

UNITED STATES PATENT-OFFICE.

John L. Mason, of New York, N. Y. Improvement in fruit-jars.

Specification forming part of letters-patent No. 102913, dated May 10, 1870.

To all whom it may concern:

Be it known that I, John L. Mason, of New York, 165 Spring street, of the county of New York, State of New York, have invented a new and useful improvement in fruit-jars, and I do hereby declare that the following is a full, clear, and exact description thereof, which will

16 enable those skilled in the art to make and use the same, reference being had to the accompanying drawing, forming part of this specification, in which drawing—

Figure 1 represents a central section of this invention. Fig. 2 is an inverted plan of the cover detached.

Similar letters indicate corresponding parts.

This invention relates to a new and improved construction of jars and other vessels designed for the preservation of fruit and other substances which are seriously affected by exposure to air, whereby India-rubber packing rings or gaskets can be employed in making tight joints without exposing the rubber to the contents of the jars, and whereby flat horrizontal shoulders formed outside of the jars are adapted to afford bases upon which to receive said rubber packing-rings upon the exterior of the jars above the continuous glass screw, and whereby flanged caps or covers can be used, the flanges of which are adapted to fit over annular ribs or flanges surrounding the mouths of the jars, and whereby flexible flanged screw-rings, made of thin metal, are adapted to confine the caps or covers down firmly in place over the mouths of the jars and upon the said rubber packing-rings placed upon the said shoulders formed outside of the jars; all of which elements I employ, as will be hereinafter

described, to produce hermetical joints, and at the same time prevent the contents of the jars having any chemical or other effect upon the packing-rings.

In the year 1861, N. S. Gilbert, and in 1862, Thomas G. Otterson, obtained letters-patent of the United States for methods of sealing preserve-jars, wherein are described methods of making a tight joint by constructing around the outside of jars, just below an annular rib or flange, a horizontal annular shoulder, upon which was seated an annular India-rubber packing-gasket. Upon this gasket the beveled flange of a cover was pressed, and temporarily held by a yoke and screw or clamp. Otterson states that the screw-clamp "may be applied when
17 the jar is filled and hot, and after it has cooled the clamp may be removed and applied to another jar." This clamp, used by Otterson, is found objectionable on account of the pressure of the screw (acting upon the centre of the cover) frequently breaking a cover, and also because the want of some positive means for holding the narrow-hooked griping-ends of the clamp in place beneath their shoulder, and preventing the clamp from casually losing its hold by lateral displacement. Ot-'erson uses his hooked screw-clamp as a temporary means for holding the cover down in place, and depends upon the partial vacuum produced in a jar by the cooling of its contents to keep the cover in place.

In Gilbert's patent a very similar arrangement to Otterson's is seen; but, instead of using a central screw to produce the pressure, Gilbert fits his yoke or clamp, which is made of rigid metal, around a central collet projecting from the top or cover of the jar, and turns this clamp or yoke about said collet.

Neither Gilbert nor Otterson construct the jar with a continuous screw-thread, nor do they depend upon a flexible metal screw-ring; therefore I regard both of the devices named as different from mine, and I lay no claim to such construction as they show.

In the year 1865 Charles Imlay obtained a patent for a mode of sealing preserve-jars, wherein he describes a method which enables him to partially overcome the difficulty above alluded to in reference to Otterson's jars. Imlay forms a screw-thread upon the upper portion of a jar, and confines the cap of the jar in place by means of flexible metal screw-ring, a flange on which bears down upon the said cap or cover. On this jar an internal shoulder is formed for receiving upon it an India-rubber packing-ring, which ring is, in this case, necessarily exposed to the action of the contents of the jar, which often injures the ring, as well as communicates an unpleasant taste to said contents. Said internal shoulder can only be formed by a cylindrical plug inserted into the mouth of the jar while the glass is hot, and it is necessarily so arranged within the circumference of the threaded surface on the jar that the flange
18 of the screw-ring will act to a disadvantage in drawing the cover down to its seat.

Gillender and Bennett also obtained a patent, in the year 1865, for a preserve-jar, wherein they combined a flexible metal screw-ring for confining a cover of a jar in place, with an India-rubber packing-ring or gasket interposed between the extreme upper edge of the jar and its cover. This plan necessited a careful grinding of the upper edge of the jar to adapt it for receiving a rubber ring, so that a tight joint might be made. This operation of grinding not only greatly increases the expense of the jar, but in almost every instance leaves flaws in the ground edge, which prevent the formation of a properly-tight joint with India rubber or any like packing; besides which, the rubber packing will be

so exposed to the contents of the jar as to become injured itself, and also impart a bad taste to fruit confined in the jar.

To obviate all of the objections above mentioned, I combine the following elements, to wit, a metallic-flanged screw-ring for confining the cover in place, a flanged cover which will receive within it the mouth of the jar, and also an India-rubber packing-ring, which is fitted upon an external shoulder upon the jar, at the upper terminus of a continuous glass screw-thread, and interposed between the said screw-ring and outer surface of the jar, as will be hereinafter more fully explained.

To enable others skilled in the art to understand my invention, I will describe its construction and operation.

In the annexed drawings, A represents a jar, which is made of glass or other vitreous material and provided with a cover, B, also made of glass or other vitreous material. The neck of the jar is constructed with an annular flange or rib, *a*, and with a flat horizontal shoulder, *b*, which latter serves as an external support for a packing-ring, *c*, of India rubber or other suitable material; and the cover B is made cup-shaped, or with a broad rim, *d*, which, when this cover is adjusted in place on the jar, as shown in Fig. 1, catches over or receives within it the rib or flange, *a*, and bears on the packing-ring *c*. By the combined action of the two rims or flanges *a* and *d* the cover is held centrally in position, and prevented from dropping off accidentally. The bottom edge of the rim *d* is, preferably, grooved or provided with one or more annular beads, so that when the cover is pressed down on the packing-ring a very tight joint is produced by the embedding of said beads into the rubber packing. The outer surface of the neck of the jar is constructed with a screw-thread, *e*, which terminates at its upper end in the external gasket-shoulder, *b*, which thread is adapted for receiving a metallic flanged screw-ring, C, which is produced of sheet metal, by spinning, rolling, or any other suitable process. The internal annular flange C′, or the top of the screw-ring C, extends over a portion of the cover B, so that in the act of screwing this ring in place upon the screw-threaded portion *e*, beneath the external shoulder *b*, the bottom of the flanged portion of the cover B will be drawn firmly in contact with the rubber ring or gasket *c* on shoulder *b*, thus making a tight joint outside of the jar, and the screw-ring C and flange or rib *a* of the jar, as shown in Fig. 1. The central opening through the top of the screw-ring C receives through it a bead, *f*, formed on the top surface of the cover B, which assists in keeping the latter in a concentric position on the jar; and the bead *f* will serve as a foot for the jar, if the jar is turned upside down.

It will be seen, from the above description, that I employ a gasket receiving shoulder, *b*, which is formed upon the exterior of the jar at the upper terminus of the glass screw thereof, and a cup-shaped cover, B, which receives the upper end *a* of the jar within it, so that the rim *d* will reach down upon the gasket on said shoulder, in combination with a flexible metallic-flanged screw-ring, which will not only confine the cover B in its place on a jar, but which affords a convenient as well as a safe means for forcibly confining this cover in place, and compressing the gasket *c* between the rim *d* of the cover B and externally-formed shoulder *b*, and also inclosing the joint thus produced outside the jar.

The said flanged screw-ring C, being made of thin sheet-metal, will be sufficiently flexible to readily yield and accommodate itself to any irregularities of the thread *e* formed on the jar, and also to that part of the cover directly over the gasket *c*, upon which it acts while holding the cover in place; and, while this is the case, it is

obvious that such a screw fastening will not be liable to break the cover, nor the thread on a jar, either applying it to or removing it from a jar, or during the contraction and expansion of the glass. Another advantage growing out of my improvement is the isolation of the glass screw-thread from the gases or juices within the jar, and thus there is no liability of the screw becoming gummed and fastened so tight as to render it difficult to turn it when desirable.

Separately considered, I do not claim a metallic flexible screw-ring or cap, C, for holding a cover on a preserve-jar, nor an external gasket receiving-shoulder upon preserve-jar, except when such gasket-shoulder is at the top of a continuous glass screw; neither do I claim the combination of a screw-ring cap with a packing-ring, so applied to a jar that a portion or the whole of such packing-ring is exposed within the jar, nor when the gasket-shoulder is at the base of the glass screw, as in my patent of 1858; but

What I do claim as new, and desire to secure by letters-patent, is—

The combination, first, of the shoulder *b* to receive a gasket outside and a little below the top of the jar; second, of the cover B, with the rim *d* extending down outside of the top, to press upon the gasket *c*; and, third, of the screw-ring or screw-cap C, with its screw-threads operating upon those of the jar below the gasket-shoulder, all substantially as above set forth and described.

JOHN L. MASON.

Witnesses:
W. HAUFF.
GUSTAV BERG.

21 *Complainant's Exhibit B.*

The United States Patent-Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office.

In testimony whereof I, J. M. Thacher, Acting Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed, this twenty-fourth day of April, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-seventh.

[SEAL.]

J. M. THACHER
Acting Commissioner.

Articles of agreement made this seventeenth day of February, 1869, between John L. Mason, of the city of New York, of the first part, and the Mason Manufacturing Company, a corporation organized under the laws of the State of New York, and doing business in the said city of New York, of the second part.

Whereas the said John L. Mason has obtained letters-patent of the United States, as follows:

No. 76220, for an improved machine for threading screw-caps, dated March 31st, 1868; No. 86089, for improvements in fruit-jars, dated January 19, 1869; No. 86090, for improvements in fruit-jars, dated January 19, 1869.

And whereas he has made application for letters-patent for an improvement in fruit-jars now pending, which application was made about the middle of January, 1868.

22 And whereas he did, on or about the 22d day of April, 1868,

make application, now pending, for letters-patent for an improvement in machine for threading screw-caps by means of a hollow chuck:

Now this agreement and indenture witnesseth that the said John L. Mason, for and in consideration for one dollar and other valuable considerations to him in hand paid, by the said party of the second part, the receipt whereof is hereby acknowledged, has given and granted, and doth by these presents give and grant, unto the said party of the second part, its successors and assigns, the exclusive right, license, and privilege to make, sell, and use throughout the United States the said inventions or improvements so patented as aforesaid, and also those described and claimed in said pending applications, for and during the residue of the terms for which said letters-patent are granted respectively, and for and during the terms for which letters-patent may be granted on said pending applications respectively.

And the said Mason Manufacturing Company, in consideration of the above grant and license, hereby covenants and agrees as follows, to and with the said party of the first part, to wit: To enter immediately upon the manufacture, in the city of New York, of the machinery and articles covered by said letters-patent and pending applications, and to keep the market supplied with such articles during the remainder of said terms yet unexpired, and during the terms of such new patents, and to use diligence in introducing the said inventions and the products of said machines into public use, and, further, to pay to said party of the first part the costs and expenses of obtaining the said patents above mentioned, and of prosecuting the applications now pending; and, further, to pay the expense of all litigations which may arise during said term concerning the right to use said inventions, patented or unpatented; also to employ said party of the first part as its superintendent, at the annual salary of fifteen hundred dollars, up to the 27th day of October, 1869, and at the rate of at least twenty-five hundred dollars per annum thereafter during the
23 period of the continuance of the privileges and rights herein granted, said salary to be payable in equal monthly payments, the said Mason hereby agreeing to devote himself faithfully to the duties of the office. And the said company hereby covenants and agrees to and with the said party of the first part that in case the said company cannot conveniently manufacture or make the machinery or articles described in said patents or applications, so as to supply the demands of the market, that then the said company will without delay cause the same to be manufactured by others, under license, for a suitable royalty, or otherwise under its authority and privilege hereby above granted; and that in case the said party of the second part fails to perform the covenants and agreements herein contained, the said exclusive rights, privileges, and licenses hereby given and granted to the said company, its successors and assigns, shall cease and determine, and the same shall thenceforth revert to the said party of the first part, his representatives and assigns, the said party of the first part, his representatives or assigns, to give to said company, its successors and assigns, thirty days' notice of the revocation and termination of the same, and this agreement and indenture shall thenceforth become void as to any claim against the said party of the first part, his heirs or assigns. And the said party of the second part further agrees to pay the said party of the first part a royalty of ten (10) cents per gross of screws manufactured by the said party of the second part, or by authority thereof, under the above-named patents and inventions, from and after the first day of January, 1876, and to make such payments on the 31st day of March, the 30th day of June, the 30th

day of September, and the 31st day of December, in the year 1876, and to continue such payments quarterly on the same days of every succeeding year to the end of the terms of the patents above named; it being expressly understood that any failure in making these payments by the party of the second part shall render this license null and void
24 for the balance remaining of the terms of the aforesaid patents.

In witness whereof the parties hereunto set their hands and seals the day and year first above written.

JOHN L. MASON. [SEAL.]
STEPHEN R. PINCKNEY, [SEAL.]
President Mason Man. Co.

Witness: As to Jno. L. Mason—
HENRY H. STORMS.

Witness: As to Stephen R. Pinckney.
Recorded June 15, 1870.

[5-cent stamp canceled, J. L. M., June.]
[5-cent stamp canceled, J. L. M., Feb. 17, '69.]

25 *Complainant's Exhibit C.*

The United States Patent-Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office.

In testimony whereof I, J. M. Thacher, Acting Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this twenty-fourth day of April, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-seventh.

[SEAL.] J. M. THACHER,
Acting Commissioner.

[5 cent. revenue-stamp cancelled.]

Whereas John L. Mason, of the city, county, and State of New York, did, on or about the 15th day of January, 1868, make application for a patent for an improvement in fruit-jars;

And whereas the United States Patent-Office did afterwards, to wit, on or about the 10th day of May, 1870, grant to said John L. Mason letters-patent for said improvement, said letters-patent being numbered 102,913;

And whereas the said John L. Mason did, by a certain instrument in writing, bearing date the 17th day of February, 1869, grant to the Mason Manufacturing Company of the city of New York, a corporation organized under the laws of the State of New York, and doing business in said city of New York, the sole and exclusive license and right to make, use, and sell the said improvement within the limits of the United States of America;

And whereas the Consolidated Fruit-Jar Company, a corpora-
26 tion organized under the laws of the State of New York, and doing business in the said city of New York, is desirous of acquiring the interest of said Mason Manufacturing Company in said improvement so patented as aforesaid:

Now, this indenture witnesseth, that for and in consideration of the

sum of one dollar, to us in hand paid, the receipt of which we acknowledge, we do hereby sell, assign, and transfer unto the Consolidated Fruit-Jar Company, of the city of New York, all our right, title, and interest in and to the said improvement, and the letters-patent therefor; and also the sole and exclusive license and right to make, use, and sell the said improvement within the limits of the United States, the same to be held and enjoyed by the said Consolidated Fruit-Jar Company, and assigns, to the full end of the term for which such letters-patent are granted, as fully and entirely as the same would have been held and enjoyed by us if this assignment and sale had not been made.

In testimony whereof we, the said Mason Manufacturing Company, have hereunto affixed our corporate seal, and caused these [SEAL.] presents to be signed by our president and secretary, this 25th day of January, 1872.

STEPHEN R. PINCKNEY, [SEAL.]
President.

WM. S. CARR, [SEAL.]
Sec. Mason M'f'g Co.

In presence of—
W. H. DE CAMP.

27 *Complainant's Exhibit D.*

The United States Patent-Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office.

In testimony whereof I, J. M. Thacher, Acting Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this twenty-fourth day of April, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-seventh.

[SEAL.] J. M. THACHER,
Acting Commissioner.

ASSIGNMENT OF PATENT.

Whereas I, John L. Mason, of the city, county, and State of New York, did obtain letters-patent of the United States of America for certain improvements in fruit-jars, which letters-patent bear date the tenth day of May, eighteen hundred and seventy, and numbered 102,913;

And whereas the Consolidated Fruit-Jar Company, a company organized under the laws of the State of New York, and doing business in the said city of New York, is desirous of acquiring an interest therein:

Now, this indenture witnesseth, that for and in consideration of the sum of one dollar to me, the said John L. Mason, in hand paid, the receipt of which is hereby acknowledged, have assigned, sold, and set over, and do hereby assign, sell, and set over unto the said Consolidated Fruit-Jar Company, all the right, title, and interest which I have in the said invention, as secured to me by said letters-patent; the same
28 to be held and enjoyed by the said consolidated Fruit-Jar Company, for their own use and behoof, and for the use and behoof of their legal representatives, to the full end of the term for which said letters-patent are granted, as fully and entirely as the same would have been held and enjoyed by me if this assignment and sale had not been made.

In testimony whereof I hereunto set my hand and affix my seal this twenty-ninth day of January, eighteen hundred and seventy-two.

JOHN L. MASON. [SEAL.]

Sealed and delivered in presence of—
W. H. DECAMP.
[5-cent stamp.]

29 Circuit court of the United States for the southern district of New York. In equity.

THE CONSOLIDATED FRUIT-JAR COMPANY
versus
JAMES F. WRIGHT.

Proofs for final hearing taken on the part of the complainant under and pursuant to the 67th rule in equity, before Joseph Gutman, jr., examiner, &c.

NEW YORK, *April* 21, 1873—10 a. m.

Present: A. J. Todd, esq., counsel for complainant, and W. C. Witter, esq., counsel for defendant.

Examination adjourned to April 26, 1873, at 11 a. m.

JOSEPH GUTMAN, JR.,
Examiner, &c.

NEW YORK, *April* 26, 1873—11 a. m.

Present: Mr. Todd, counsel for complainant, and Mr. Witter, counsel for defendants.

Counsel for complainant offers in evidence letters-patent to John L. Mason, dated May 10, 1870, No. 102,913, for improvement in fruit-jars.

(It is marked "Complainant's Exhibit A.")

Counsel for defendants consents that a certified copy may be substituted for the above at any time after its being submitted to his inspection and approval.

Counsel for defendant hereby admits the due incorporation of complainants, and waives proof on that point.

30 Counsel for complainants puts in evidence certified copy of license granted by John L. Mason to The Mason Manufacturing Company.

(It is marked "Complainant's Exhibit B.")

Also a certified copy of the transfer from The Mason Manufacturing Company to the complainants, The Consolidated Fruit-Jar Company.

(It is marked "Complainant's Exhibit C.")

Also a certified copy of transfer from John L. Mason to the complainants, The Consolidated Fruit-Jar Company, which is marked "Complainant's Exhibit D."

Examination adjourned to April 29, at 11 a. m.

JOSEPH GUTMAN, JR.,
Examiner, &c.

NEW YORK, *April* 29, 1873—11 a. m.

Present: Counsel for the respective parties.

ADELBERT R. VERMILYEA, a witness of lawful age, produced on the part of the complainants.

It is admitted by counsel for defendant that A. R. Vermilyea, on

the 10th of June, 1872, bought of the defendant herein, and that the defendant sold to him on that day, one dozen fruit-jars, of which the jar marked "Complainant's Exhibit E" is one, and that the bill marked "Complainant's Exhibit F" is the bill for the same.

NEW YORK, *November* 17, 1873—11 a. m.

Present: Mr. Todd, counsel for complainants.

Examination adjourned to November 18, 1873, at 12 m.

JOSEPH GUTMAN, JR.,
Examiner, &c.

31 NEW YORK, *December* 18, 1873—12 m.

Present: Mr. Todd, counsel for complainants, and Mr. Witter, of counsel for defendants.

Counsel for defendant here gives notice that he desires to put in further testimony in defence before the replying testimony is proceeded with; that he offers to close said testimony in defence within one week from to-day, and to consent to such an extension of the complainants' time for replying as they may desire.

THOMAS J. MOULD, a witness of lawful age, produced on the part of the complainants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by Mr. Todd, deposes and says as follows:

1. Q. What is your name, age, and occupation?

A. My name is Thomas J. Mould; I am 53 years old; I reside at Jerser City, N. J.; I am at present not engaged in any occupation; I am a glass-blower by trade.

2. Q. Are you acquainted with John L. Mason; if so, about how early did you became acquainted with him?

A. I am. I became acquainted with him about the latter part of 1855 or the first part of 1856.

3. Q. Have you any knowledge of there being blown for said Mason glass fruit-jars and glass covers?

A. Yes; I have knowledge of fruit-jars being blown for Mr. Mason, and of covers likewise being pressed.

4. Q. Where was this done for said Mason, and in whose works was it done?

A. In the Jersey City glass-house, corner of Essex and Washington streets, Jersey City.

5. Q. What was the name of the firm who did the work for said Mason at those glass-works—at that glass-house?

A. Reed, Thompson & Co.

6. Q. In what year was it done?

A. In 1859, to the best of my knowledge.

32 7. Q. Who blew these glass jars and pressed these glass covers?

A. They might have been blown by me, or they might have been blown by Charles Hazleton. I don't know who pressed the covers.

8. Q. Did you see these glass jars and glass covers after they were blown and pressed?

A. Yes, sir; I saw some of them.

9. Q. Could you identify one of them, or one similar to them, if you should see it?

A. I think I could—that is, so far as the jar and cover is concerned.

In testimony whereof I hereunto set my hand and affix my seal this twenty-ninth day of January, eighteen hundred and seventy-two.

JOHN L. MASON. [SEAL.]

Sealed and delivered in presence of—
W. H. DECAMP.

[5-cent stamp.]

29 Circuit court of the United States for the southern district of New York. In equity.

THE CONSOLIDATED FRUIT-JAR COMPANY
versus
JAMES F. WRIGHT.

Proofs for final hearing taken on the part of the complainant under and pursuant to the 67th rule in equity, before Joseph Gutman, jr., examiner, &c.

NEW YORK, *April* 21, 1873—10 a. m.

Present: A. J. Todd, esq., counsel for complainant, and W. C. Witter, esq., counsel for defendant.

Examination adjourned to April 26, 1873, at 11 a. m.

JOSEPH GUTMAN, JR.,
Examiner, &c.

NEW YORK, *April* 26, 1873—11 a. m.

Present: Mr. Todd, counsel for complainant, and Mr. Witter, counsel for defendants.

Counsel for complainant offers in evidence letters-patent to John L. Mason, dated May 10, 1870, No. 102,913, for improvement in fruit-jars.

(It is marked "Complainant's Exhibit A.")

Counsel for defendants consents that a certified copy may be substituted for the above at any time after its being submitted to his inspection and approval.

Counsel for defendant hereby admits the due incorporation of complainants, and waives proof on that point.

30 Counsel for complainants puts in evidence certified copy of license granted by John L. Mason to The Mason Manufacturing Company.

(It is marked "Complainant's Exhibit B.")

Also a certified copy of the transfer from The Mason Manufacturing Company to the complainants, The Consolidated Fruit-Jar Company.

(It is marked "Complainant's Exhibit C.")

Also a certified copy of transfer from John L. Mason to the complainants, The Consolidated Fruit-Jar Company, which is marked "Complainant's Exhibit D."

Examination adjourned to April 29, at 11 a. m.

JOSEPH GUTMAN, JR.,
Examiner, &c.

NEW YORK, *April* 29, 1873—11 a. m.

Present: Counsel for the respective parties.

ADELBERT R. VERMILYEA, a witness of lawful age, produced on the part of the complainants.

It is admitted by counsel for defendant that A. R. Vermilyea, on

the 10th of June, 1872, bought of the defendant herein, and that the defendant sold to him on that day, one dozen fruit-jars, of which the jar marked "Complainant's Exhibit E" is one, and that the bill marked "Complainant's Exhibit F" is the bill for the same.

NEW YORK, *November* 17, 1873—11 a. m.

Present: Mr. Todd, counsel for complainants.

Examination adjourned to November 18, 1873, at 12 m.

JOSEPH GUTMAN, JR.,
Examiner, &c.

31 NEW YORK, *December* 18, 1873—12 m.

Present: Mr. Todd, counsel for complainants, and Mr. Witter, of counsel for defendants.

Counsel for defendant here gives notice that he desires to put in further testimony in defence before the replying testimony is proceeded with; that he offers to close said testimony in defence within one week from to-day, and to consent to such an extension of the complainants' time for replying as they may desire.

THOMAS J. MOULD, a witness of lawful age, produced on the part of the complainants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by Mr. Todd, deposes and says as follows:

1. Q. What is your name, age, and occupation?

A. My name is Thomas J. Mould; I am 53 years old; I reside at Jerser City, N. J.; I am at present not engaged in any occupation; I am a glass-blower by trade.

2. Q. Are you acquainted with John L. Mason; if so, about how early did you became acquainted with him?

A. I am. I became acquainted with him about the latter part of 1855 or the first part of 1856.

3. Q. Have you any knowledge of there being blown for said Mason glass fruit-jars and glass covers?

A. Yes; I have knowledge of fruit-jars being blown for Mr. Mason, and of covers likewise being pressed.

4. Q. Where was this done for said Mason, and in whose works was it done?

A. In the Jersey City glass-house, corner of Essex and Washington streets, Jersey City.

5. Q. What was the name of the firm who did the work for said Mason at those glass-works—at that glass-house?

A. Reed, Thompson & Co.

6. Q. In what year was it done?

A. In 1859, to the best of my knowledge.

32 7. Q. Who blew these glass jars and pressed these glass covers?

A. They might have been blown by me, or they might have been blown by Charles Hazleton. I don't know who pressed the covers.

8. Q. Did you see these glass jars and glass covers after they were blown and pressed?

A. Yes, sir; I saw some of them.

9. Q. Could you identify one of them, or one similar to them, if you should see it?

A. I think I could—that is, so far as the jar and cover is concerned.

10. Q. Please look at the jar and cover now shown you, which is marked "Exhibit 23, G. J., ex'r," and state if you recognize it as one of such jars and covers, or which bear any resemblance thereto.

A. That bears a resemblance to the jars and covers.

11. Q. Have you any doubt on your mind as to that being similar to such jars and covers?

A. No, sir; none at all.

12. Q. About how many of such jars and covers in all were blown and pressed?

A. Well, from 18 to 24.

13. Q. When was the firm of Reed, Thompson & Co. formed?

A. In the first part of 1859. We carried on together a little before that, however, to see how it would work.

14. Q. Until about what year did it continue to carry on business?

A. Up to 1867; pretty near to 1867.

Right to cross-examine reserved.

THOS. G. MOULD.

NEW YORK, *Nov.* 19, 1873—12 m.

Present: Counsel for the respective parties as before.

The witness, Mould, produced for cross-examination, and being cross-examined by Mr. Witter:

15. X Q. Will you describe the operation of blowing a glass jar?

33 A. You first warm the mould and get it hot enough so that it won't show the crystles on the jar, then take a pipe or tube which you use to blow with, gather out the quantity of metal you want, take it in an iron marble, roll it on there and chill the outside sufficient so that the glass will blow through, you blow the glass out on the marble in shape—proper form—and put it onto the mould and blow into it.

16. X Q. Of what does the mould you speak of consist?

A. Cast iron.

17. X Q. Is the jar blown inside of it or outside of it?

A. Inside of it.

18. X Q. Of how many parts does it consist?

A. In some moulds of two, in some of three.

19. X Q. Did you see the moulds that were employed in blowing the glass jars for Mr. Mason of which you have spoken?

A. I am not positive about that; it is most likely, but I am not positive.

20. X Q. At what part of the operation was the screw-thread put upon these jars?

A. Upon the operation of blowing you formed the screw.

21. X Q. How soon after these jars were blown did you see them?

A. It might possibly have been the next day, or two or three weeks.

22. X Q. Then you did not see them on the day they were blown?

A. Well, I could not say positive whether I did or not.

23. X Q. How came you to see them at all?

A. In the room they put the ware after it comes out of the annealing oven there is a long galley-way running down alongside of the annealing ovens to the room—I saw them on the shelf as I went into the room—some of the jars and covers.

24. X Q. Then I suppose you only saw them as you were passing casually by?

34 A. No, sir; I stopped in there and picked them up—handled them and looked at them.

25. X Q. Will you state how you happened to do that?

A. It was very customary to pick up ware in the store-room and examine it. I was so particular in looking at those on account of the glass cover; I never saw any with a glass cover before.

26. X Q. Do you mean that the 18 to 24 jars and covers, which you have spoken of, were all upon that shelf at the time you saw them?

A. I did not count them.

27. X Q. Then how are you able to say that there were 18 to 24?

A. Well, I should judge from the small quantity there was there.

28. X Q. How many of these jars did you take particular notice of?

A. Well, I might have picked up half a dozen of them and looked at them.

29. X Q. I suppose you might have picked them all up if you had chosen to do so. My question was, how many did you examine particularly, and not how many you might have examined.

A. That is a question I could not answer, how many I examined; it is very customary, in anything new that is blowing, to examine some of them to see that it is perfect. I could not say how many I picked up.

30. X Q. Can you say that you examined more than one of these jars?

A. Yes, sir.

31. X Q. Were these jars that you examined completed jars?

A. No, sir.

32. X Q. What is the reason?

A. They had not been into the cutting-shop to be ground off on the top.

33. X Q. When you examined these jars will you state to what you particularly directed your attention?

A. The glass cover.

35 34. X Q. Then you don't know much about how the jar itself looked, do you?

A. Yes; it was a quart-size jar—a straight jar up and down, round-shouldered, flat bottom, with a screw neck.

35. X Q. Have you now stated all the particulars to which you directed your attention?

A. Yes, sir; I believe so.

36. X Q. What did you notice about the covers of the jars?

A. I noticed nothing in particular, only that they were glass covers, pressed.

37. X Q. Will you describe the operation which you have termed pressing?

A. Well, we have several presses in the glass manufacture; we have some four or five different sizes. A mould is made in three separate pieces generally for a pressed cover; a plunger and follower is put in the press; a man or a boy gathers out the metal, and the presser cuts the quantity and pulls down the lever of the press unto the glass on the mould. That forms the cover. It is taken away from that by a boy, and put in the annealing oven.

38. X Q. What effect does the annealing process have upon the glass?

A. Well, it prevents it from breaking—flying to pieces. There are some things that they don't anneal, such as a kerosene-chimney.

39. X Q. How are you able to say that the jars and covers which you did not examine were like these which you did examine?

A. They were all blown in one mould.

40. X Q. How do you know that?

A. Well, there was no other mould for jars blowing at the time with screw necks.

41. X Q. Well, how do you know that?

A. Well, one reason I should know it is I was always around the concern as a general thing, and looking around to see what there was there.

36 42. X Q. How do you know that the jars which you did not examine were moulded jars, or that they had a screw neck?

A. They all stood together, a small little lot on a shelf.

43. X Q. Is that the only way you knew?

A. That's the only way.

44. X Q. You never saw anything more of these jars, did you?

A. No, sir; I guess they were broken up, what was left.

45. X Q. What makes you think they were broken up?

A. We generally use everything that is left over for collet, to melt up again.

46. X Q. What do you mean by what was left?

A. Any that was not perfect, that did not go away.

47. X Q. You have not said anything about jars going away, have you?

A. No, sir.

49. X Q. Have you any charge on your books which will show what kind of jars they were, or where they went to?

A. No, sir; I have never looked at the books so far as that goes. Mr. Reed used to have charge of the books.

50. X Q. What was your particular business at that house?

A. An operator in the glass business.

And being further examined by Mr. Todd, he deposes and says:

Redirect:

51. R D Q. Were you a member of the firm of Reed, Thompson & Co.? Who are the other members, and what has become of such persons?

A. I was. The other members were Thomas Thompson, who is dead; Charles Hazleton, who is dead, and Horatio Reed, who is living.

52. R D Q. At the time that you examined the jars on the shelf as you state, did you take sufficient notice of the way the glass

37 cover fitted on the mouth of the jar, and the way the joint was made between the jar and cover with reference to the location of the screw-thread on the neck of the jar, so as to be able to understand the same, and to recollect it at the present day?

(Objected to as leading.)

A. I could not do it then; the jars were not ground off; were not finished.

53. R. D. Q. Please state what was not ground off on these jars.

A. The blow-over on the top of the mould.

54. R. D. Q. How was that blow-over above the glass screw-thread on the neck of the jar removed, and was there any part left after it was clipped off above the said glass screw-thread?

(Objected to for the reason that nothing has been said either on the direct or cross examination about any blow-over, and as assuming that something had been chipped off, a matter which seems to defendant's, counsel to rest solely in the mind of counsel for complainant.

Complainant's counsel amends so as to substitute "removed" for "chipped off," to satisfy defendant's counsel as to his, defendant's, terms.

Defendant's counsel makes the same objection to the question as amended.)

A. It was removed with a sharp-end file, or chipper. Sometimes there was little pieces left on the top of the jar that did not chip off, and prevented the cover from fitting until they were ground off.

55. R. D. Q. On what did the edge of the cover rest?

A. I could not get the cover down to tell exactly.

56. R. D. Q. After the blow-over was removed, what portion of the jar was there left for the cover to rest upon?

(Objected to as leading, and for the reason that the witness has not said anything upon the direct or cross examination upon the sub-
38 ject of the blow-over, and because the witness has said he could not tell exactly what the edge of the cover did rest upon, and has stated in detail all the points to which he directed his attention.)

A. It would rest upon the top.

57. R. D. Q. Where was this top on which the glass cover rested, with reference to the position of the glass thread on the neck of the jar.

(Objected to for the reason that the witness has not said that the glass cover "rested," but only that it "would rest," and further objected to for the reason that this subject of where the cover rested, or would rest, was not touched upon in the cross-examination, and that it is not legitimate redirect examination.)

A. I answered that question once. I said the top of the jar was not ground off, didn't I?

58. R. D. Q. From the position of the parts, and the location of the blow-over above them, on what would the edge of the glass cover rest when the blow-over would be removed? You call it the top; where would that top be located, with reference to the mouth of the jar, and the position of the glass thread on the neck of the jar, when such blow-over would be removed?

(Objected to for the reason that the counsel for complainant has no right to assume that there was a blow-over, or the location of the blow-over; and for the reasons stated in the first part of the objection made to redirect 56, and in the objection made to redirect 57.

Complainant's counsel call the attention of the court to answer to 53d redirect, "The blow-over on the top of the mould.")

39 A. I did not look at it particularly enough for that—that part of it; sometimes they grind them off lower than the mould really is.

THOMAS J. MOULD.

Subscribed and sworn to before me this 19th day of November, 1873.

JOSEPH GUTMAN, JR.,
Examiner, &c.

Counsel for defendant gives notice that on the hearing of this case he will move that those parts of the above deposition to which objections have been made be expunged; and requests the examiner to caution the witness Horatio Reed not to converse upon or to listen to anything regarding the subject of this examination with any person whatever, and to state to said witness that the first question which will be asked him will be whether he has so conversed or listened.

Recess taken for half an hour, the examiner having instructed the witness as above requested.

JOSEPH GUTMAN, JR.,
Examiner.

HORATIO REED, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter

A. Well, one reason I should know it is I was always around the concern as a general thing, and looking around to see what there was there.

36 42. X Q. How do you know that the jars which you did not examine were moulded jars, or that they had a screw neck?

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A. Any that was not perfect, that did not go away.

47. X Q. You have not said anything about jars going away, have you?

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Complainant's counsel amends so as to substitute "removed" for "chipped off," to satisfy defendant's counsel as to his, defendant's, terms.

Defendant's counsel makes the same objection to the question as amended.)

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(Objected to for the reason that the counsel for complainant has no right to assume that there was a blow-over, or the location of the blow-over; and for the reasons stated in the first part of the objection made to redirect 56, and in the objection made to redirect 57.

Complainant's counsel call the attention of the court to answer to 53d redirect, "The blow-over on the top of the mould.")

39 A. I did not look at it particularly enough for that—that part of it; sometimes they grind them off lower than the mould really is.

THOMAS J. MOULD.

Subscribed and sworn to before me this 19th day of November, 1873.

JOSEPH GUTMAN, JR.,
Examiner, &c.

Counsel for defendant gives notice that on the hearing of this case he will move that those parts of the above deposition to which objections have been made be expunged; and requests the examiner to caution the witness Horatio Reed not to converse upon or to listen to anything regarding the subject of this examination with any person whatever, and to state to said witness that the first question which will be asked him will be whether he has so conversed or listened.

Recess taken for half an hour, the examiner having instructed the witness as above requested.

JOSEPH GUTMAN, JR.,
Examiner.

HORATIO REED, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter

of controversy herein, and being examined by Mr. Todd, counsel for complainant, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is Horatio Reed. I am about 54 years old. I reside at 85 Warren street, Jersey City, N. J. I am a glass-maker by profession.

40 2. Q. Are you acquainted with John L. Mason; if so, for what length of time have you been acquainted with him?

A. I am. To the best of my recollection it was about the year 1856 that I became acquainted with him.

3. Q. Have you any knowledge of there being any glass fruit-jars and glass covers blown for said Mason?

A. Yes, sir; the covers were pressed and the jars blown.

4. Q. Where was this done for said Mason, and in whose works was it done?

A. It was done at the corner of Essex and Washington streets, Jersey City, by the firm Reed, Thompson, Hazleton & Mould.

5. Q. In what year was it done?

A. In the year 1859.

6. Q. Who blew these glass jars and pressed these glass covers—I mean, who did the work, personally?

A. The work of blowing the jars was done by Thomas J. Mould; the covers were pressed by myself.

7. Q. Will you please describe these glass jars and covers which were so blown and pressed, so far as the neck and way in which the joint was made between the neck of the jar and cover?

A. The jar was represented to be the size of a quart jar; it had a neck on it about an inch or so long, with a screw cut onto it; it had a recess to form a second shoulder; from that shoulder there was a small plain neck running up about half an inch; that completed the jar. The cover had a bottom to it, and a side, it might be half an inch long, with a convex groove on the edge; that formed the cover.

8. Q. About how many of these jars and covers were blown?

A. There were about 22 or 24 of the jars made; of the covers I think there were a few more.

9. Q. Have you any knowledge of any fastenings or means of holding the jars and covers together, and which were used with those jars and covers at that time; if so, what were they?

41 A. I have; it was a gutta-percha or India-rubber ring that rested on the upper shoulder; the cover was placed on the gutta-percha or India-rubber ring, with a sheet-metal cap with a screw cut on it, to correspond with the screw cut on the outer neck of the jar; they placed the sheet-metal cap over the cover; it came in contact with the sceew on the outer neck of the jar; they turned the sheet-metal cover around, and that screwed the glass cap down on the gutta-percha or India-rubber ring. That made a tight joint to it.

10. Q. Could you identify one of said jars, covers, and rings, or one similar thereto, were you to see it?

A. Yes, sir.

11. Q. Please look at the jar Exhibit 23, J. G., jr., ex'r, and state how, if at all, it resembles or differs from such jars, covers, and rings.

A. I don't think it differs at all, sir; so far as the sheet-metal is concerned, I would not say positive; as to the rest it is the same.

12. Q. Do you mean by your last answer to have any doubt as to the form of the sheet-metal ring or of the material of which it is composed?

A. The form of the sheet-metal cap is facsimilar to what we were using, but the material I am not positive about.

13. Q. To whom did the moulds for the glass jar and glass cover belong?

A. To John L. Mason, to the best of my knowledge.

14. Q. What became of the jars and covers which were so blown and pressed?

A. I think the number of about one-half dozen was delivered to John L. Mason; there was either one or two taken away by Mr. John L. Brooks, the man who made the moulds; there was one kept by myself for several years. I think the others were destroyed; in fact, I know they were destroyed.

15. Q. Were these jars that were taken away, and also the one that you kept, finished up complete, gasket and screw-ring?

42 A. I could not say further whether they were or not; the ones that Mr. Brooks took away I did not see; it was a privilege granted Mr. Brooks to have a model made of any mould that he sent there for himself individually. I can't say positively of the half dozen that Mr. Mason took away, whether they were fitted up or not. The one I retained myself Mr. Mason presented to me, with the cap and gutta-percha ring; he insisted on putting them together, and explained to me the utility of the improvement.

16. Q. What became of the jar and cover which you say you kept?

A. It was sold, sir.

17. Q. Under what circumstances?

A. To assist in paying my honest debts.

18. Q. What became of the moulds for the glass jar and cover?

A. I sold them, sir.

19. Q. Under what circumstances, for what reason, and about when?

A. They were sold in 1867; they were sold for the reason that I could not afford to pay storage on them, not knowing where to find Mr. Mason to deliver them to him at the time.

20. Q. What enables you to fix it as being in 1859 when these jars were blown and the covers pressed, as you testify, from the mould which belonged to Mr. Mason?

A. It was the early part of 1859 that we went into business—that the copartnership of Reed, Thompson & Co. was formed, and it was in the early part of that time that the work was done.

21. Q. When were the moulds received, with reference to the time when they were used for the obtaining of these jars and covers?

A. I could not hardly say, within a month, even; I could not give the date of the month.

22. Q. I mean how soon after they were received were the jars blown and covers pressed?

43 A. I think the jars were blown inside of 24 hours after the moulds came there. I don't think the covers were made for 24 hours after that again.

(Right of objection and cross-examination reserved.)

HORATIO REED.

HORATIO REED, being cross-examined by Mr. Witter, counsel for defendants, deposes and says as follows:

23. X Q. Have you conversed with any one, or has any one said anything to you, with reference to the subject-matter of this examination since your direct examination? If yea, who was it?

A. There has not, only the few words that were spoken here. In fact, I don't understand the case yet—what it is about.

24. X Q. Have you any memoranda or written entry which will show the character of the jars and covers which you say were made for Mr. Mason in 1859?

A. No, sir; I have nothing but my memory.

25. X Q. It is something over 14 years—or it is about 14 years, is it not—since these matters which you have related occurred, is it not?

A. It is not quite so long as that, I should think.

26. X Q. Do you know the difference between gutta-percha and India rubber?

A. Well, I do not know the difference of the bodies.

27. X Q. Do you remember distinctly of seeing Mr. Mould, the last witness, in the act of blowing these jars; or what reason have you for thinking that he was the man that did the blowing?

A. Because I saw them blown.

28. X Q. What makes you think there were a few more covers than there were jars?

A. Because I made them myself.

29. X Q. Were these jars perfect completed jars?

A. Not the whole of them, sir.

44 30. X Q. In what did the completion of these jars which were completed consist?

A. There was only one of them, to my recollection, ever was completed. The ones that Mr. Mason took away needed India-rubber bands on top. I didn't see him put India-rubber bands on.

31. X Q. Will you now state in what the completion of the jar which you say was completed consisted?

A. It consisted of a body that would hold about a quart, with a neck on it about an inch or more long, with a screw cut in it, and the top of the screw with a recessed shoulder about one-fourth inch or less. From that shoulder was a plain neck running up about one-fourth inch or more. There was a glass cap with a convex groove in it. There was an India-rubber band fitted over the plain neck, and rested on the shoulder above the screw. They placed the glass cap on the India-rubber band. They passed a sheet-metal screw-cap over the glass-cap to come in contact with the screw on the neck of the jar. They turned the sheet-metal screw around; that forced the glass cap on the India-rubber ring.

32. X Q. Was that jar and cover the one of which you were speaking in your answer to the 16th and 17th questions?

A. Yes, sir.

33. X Q. To whom was it sold?

A. I do not know to whom.

34. X Q. How can you say that it was sold, without knowing to whom it was sold, or under whose auspices?

A. All our samples were put up in lots and sold to the highest bidder.

35. X Q. Did you ever put any fruit in this jar, or anything to test its qualities?

(Objected to as immaterial.)

A. I did not, sir.

36. X Q. Will you state whether this jar had its top chipped off or ground; and, if it did, will you state who performed that operation?

A. I did it myself, personally.

45 37. X Q. Did you do that to more than one jar?

A. I could not positively say that I did.

38. X Q. This operation required to be performed, did it not, before the jar was a perfect jar, fit for use?

A. Yes, sir.

39. X Q. Were the moulds of which you have spoken sold at the same time that this jar was?

A. No, sir.

40. X Q. When was the jar sold?

A. It might have been the early part of 1867.

41. X Q. When were the moulds sold?

A. In the month of April, 1867.

42. X Q. Where had these articles been in the mean time, namely, the moulds and the one jar?

A. The jar was in what we called the sample-room; the mould was in what they called the mould-room.

43. X Q. Laid away amongst various other moulds and samples?

A. Yes, sir.

44. X Q. Were these the places where you kept your various experimental articles when you took jobs for people?

A. Yes, sir; all samples would. There was a room for the express purpose to keep samples in.

45. X Q. What sort of glass was the glass cap used upon these jars?

A. It was what we called flint glass.

And, being further examined by Mr. Todd, he says:

Redirect:

46. R. D. Q. When you stated, in answer to the 23d cross-interrogatory, that you did not understand the case yet—what it is about—what did you mean by that expression?

A. I meant that I did not know what my testimony was required about.

47. R. D. Q. Would you not know gutta-percha and India rubber if you should see them, or these substances which are called gutta-percha and India rubber?

A. I don't think I could distinguish the difference, only that I understood one is a harder body than the other.

46 48. R. D. Q. Will you please describe the moulds for which these glass jars and glass covers were obtained, which you subsequently say you sold?

(Objected to for the reason that the witness has not been questioned on the character of these moulds on the cross-examination, in any particular, and that the question is not a proper one for a redirect examination.)

A. The mould for the making of the jar was in eight pieces. They were put together, though, and formed three pieces when put together. There was a bottom, a bolt running through the hinges, a pair of iron handles, two half-cylinder sides, with a neck with a screw on it, and a blow-over cap on the top. That composed the mould for the jar. The mould for the cover had a bottom die, and there was a ring which we term follower, and a plunge to fit on the inner side of the follower. That was the cover-mould.

49. R. D. Q. Please describe more specifically the construction of the mould at the neck.

(Same objection as to the last question.)

A. I don't know as I can describe it any better than I do.

50. R. D. Q. Please state how the neck of the mould was formed or shaped, to provide for the receiving of the glass cover on the blown jar.

(Same objection as to the last question.)

A. Well, the glass cover would not fit on the mould. I hardly know how to get at that.

51. R. D. Q. Please state how the neck of the mould was formed or shaped so as to provide for the receiving of the edge of the cover on the glass jar after being blown on it.

(Same objection, and also objected to as leading.)

A. It had a neck to it with a screw cut on to it. It had a recess
47 inward, towards the centre of the mould, about a quarter of an inch. From that inset or recess, whichever you have a mind to term it, there was a small neck running up about half an inch.

52. R. D. Q. Did you ever try to get possession of this mould for the glass jar, and also for the glass cover; if so, when, and at whose request?

(Objected to, as this subject has not been touched upon in the cross-examination.)

A. I think it was about the month of June, 1867; by the request of Mr. Mason.

53. R. D. Q. Did you succeed or not in obtaining them?

(Same objection.)

A. I did not.

54. R. D. Q. To whom were these moulds sold?

A. To a gentleman by the name of Mr. Carey, on the corner of Essex and Green streets, Jersey City.

55. R. D. Q. Did you do any work for John L. Mason, besides the blowing and pressing of these glass jars and glass covers, while you were a member of the firm of Reed, Thompson & Co., in the way of making glass fruit-jars?

A. I think we did do other outside of that job.

56. R. D. Q. While you were a member of the firm of Reed, Thompson & Co., what other work did you do for John L. Mason, and when, in the way of blowing jars?

(Defendant's counsel here seasonably objects to the 55th redirect and 56th redirect, because the subject of these questions has not been touched upon in the cross-examination, because it is new matter, and not proper for re-examination.)

A. I could not really state the time. I don't intend to say we blew jars; to the best of my recollection we merely pr'ssed covers for him.

HORATIO REED.

Subscribed and sworn to before me this 19th day of Nov., 1873.

JOSEPH GUTMAN, JR.,
Examiner, &c.

48 Counsel for defendant here gives the same notice as at the end of the deposition of Thomas J. Mould.

CHARLES G. FRAMPTON, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by Mr. Todd, counsel for complainant, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is Charles G. Frampton. I am 46 years of age. I reside at No. 289 Columbia street, Brooklyn. I am a metal-spinner and brass-finisher.

2. Q. Do you know John L. Mason? If so, how long have you been acquainted with him?

A. I do. I have been acquainted with him since 1856.

3. Q. State briefly under what circumstances you became acquainted with John L. Mason.

A. Through an advertisement which I saw in the Sun newspaper, in the early part of 1856, calling for a metal-spinner.

4. Q. Did you engage with said John L. Mason at that time?

A. I did.

5. Q. Did you ever make a model for said Mason for a glass-jar and glass-cover mould?

A. I did.

6. Q. When did you make such model?

A. Some time during the summer of 1850.

7. Q. Please state where you made it for him.

A. I made that model in a shop in Pearl street, New York.

8. Q. What did he do with that model?

A. That I don't know, sir. I made it for him and he took it away with him.

9. Q. Will you please describe that model of glass jar and glass cover so made by you for said Mason?

49 A. It was a piece of wood turned in the shape of an ordinary fruit-jar, rounding off at the top to a neck, with a place left on the space above for a screw to be cut in it. There was a cap made for it at the time, to set over the top of it, the edge of that cap being turned out so as to make two sharp points.

10. Q. Did Mr. Mason state to you the object of these two sharp points on the edge of the cap? If so, please state it.

A. I believe he stated to me that the object of those sharp points was for the purpose of sinking into the rubber gasket and making a more perfect joint.

11. Q. Where was the rubber gasket to be placed?

A. Above the screw, resting on a shoulder left on the jar.

12. Q. Where was this shoulder placed with reference to the position of the screw on the neck of the jar?

A. At the neck of the jar. The screw had to pass over the cap.

13. Q. What screw do you refer to in your last answer as passing over the cap?

A. The sheet-metal screw that binds the glass cap on to the gasket.

14. Q. Where was this shoulder for the gasket placed on the neck of the jar, having reference to the position of the glass-threaded screw in the neck of the jar?

A. It was above the glass thread.

15. Q. Please state if you would be able to identify the model you so made for Mr. Mason, were you to see it.

A. I think I should.

16. Q. Please state of what material this model was composed.

A. A piece of maple wood.

17. Q. Of what material was the cover of the model composed?

A. I think it was mahogany.

18. Q. How do you fix it as being in the summer of 1859 when you so made the model for Mr. Mason?

50 A. By reference to a book which I have in my possession, which contains the dates of the year and business accounts that I was in in that year.

19. Q. What business was that, and when was it that you went into it?

A. The grocery business. I think it was the early part of 1859 that I went into it.

20. Q. Do you recollect when you went into the shop in which that model was made by you for Mr. Mason?

A. I think it was in the spring of 1859, to the best of my recollection.

21. Q. How long did you continue in the grocery business?

A. Until some time in 1860.

22. Q. Do you recollect when Mr. Mason left that shop in Pearl street?

A. I do not, sir.

23. Q. Do you recollect giving him the model before he left there?

A. Yes, sir; I do.

24. Q. Please look at the model jar and cover now shown you, marked "Exhibit J. G. Jr.," and state how that compares with the model which you so made for John L. Mason in the year 1859?

A. I believe this to be the model, although it would be an easy matter for any expert in wood-turning to produce one very similar; but I believe this to be the one.

25. Q. Does it show any different or other construction so far as the relation of the parts at the neck, and at the cover, and the making of the joint between the neck and the cover are concerned?

A. It does not.

26. Q. Who was the person or firm who carried on the business at the Pearl-street shop in 1859?

A. Payne & Co.

27. Q. Were you in their employ, and was Mr. Mason one of that company?

A. I was in their employ, and I believe Mr. Mason was one of the company.

28. Q. How long did you remain at that Pearl-street shop in their employ?

51 A. From the time that they moved into Pearl street until some time in the fall of 1859.

C. G. FRAMPTON.

Cross-examination and right of objection reserved, and cross-examination adjourned to November 19, 1873, at 6 p. m.

Examination adjourned to November 19, 1873, at 12 m.

JOSEPH GUTMAN, JR.,
Examiner, &c.

NEW YORK, *November* 19, 1873—6 p. m.

Examination of the witness Charles G. Frampton resumed, pursuant to adjournment of November 18, by Mr. Todd:

29. Q. Did you, previous to the year 1859, spin for John L. Mason any sheet-metal screw-rings? If so, state for what form or size of jar.

A. I spun some screw rings or caps for jars in the spring of 1856, to the best of my recollection. They were large-size covers.

30. Q. Were they opened or covered at the top?

A. The top and the screw were one piece of metal.

31. Q. Were they open at the top or were they covered?

A. They were not open.

32. Q. Did you ever spin any *one* which were open or which were cut open after they were spun?

A. I did at a subsequent period.

33. Q. When?

A. In 1856.

34. Q. Could you identify such a sheet-metal screw-ring and the jar for which they were so made?

A. I think I could.

35. Q. Please look at ring marked "Defendant's exhibit 25, J. G., jr., exr.," and jar "Defendant's exhibit 22, J. G., jr., exr.," and state
52 how that resembles or differs from the ring which you at that time made; also how the jar differs from or resembles the ja r for which they were made.

A. The ring has the general appearance of a ring that I spun for that jar. The jar itself does not differ, that I remember now, from the jars that I spun caps for.

(Counsel for defendant waives cross-examination.)

C. G. FRAMPTON.

Subscribed and sworn to before me this 19th day of November, 1873.

JOSEPH GUTMAN, JR.,
Examiner, &c.

Examination adjourned to Nov. 20, 1873, at 11 a. m.

JOSEPH GUTMAN, JR.,
Examiner, &c.

HOMER BROOKE, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by Mr. Todd, counsel for complainants, deposes and say', as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is Homer Brooke. I am 32 years of age. I reside at 195 Ross street, Brooklyn, N. Y. I am a glass-moulder.

2. Q. State when you went into business for yourself as such glass-moulder.

A. In 1863.

3. Q. Whom, if any one, did you succeed in business?

A. My father, William Brooke.

4. Q. Is your father now living? If not, when did he die?
53 A. No, sir; he died in January, 1863.

5. Q. Were you engaged with your father or employed by him in his business? and state what was such business.

A. I was employed by him. His business was glass-moulding.

6. Q. Did your father, while engaged in such business, make any mould or moulds for the blowing of glass fruit-jars with glass covers?

A. Yes, sir.

7. Q. For whom did he so make them; that is, who ordered them?

A. For different parties. John L. Mason was one of the parties ordering them.

8. Q. When did he make any such mould for John L. Mason?

A. In June, 1859.

9. Q. Please describe those moulds.

A. One was a mould for blowing a screw-top jar of the capacity of about a quart, and a mould for making a glass cover for the jar.

10. Q. What was the construction of the mould at the neck and portion which formed the part of the jar which received the cover?

A. It was provided with a shoulder above the screw and a neck above the shoulder.

11. Q. In what shop was this mould for jar and mould for cover made?

A. At my father's, in White street, corner of Centre, in this city.

12. Q. When did your father move to that shop, and from where?

A. In March, 1859, I think, from the Jersey City Glass-house.

13. Q. Did you do any work on these moulds for jar and cover?

A. Yes, sir.

14. Q. What was it?

A. It was the lathe-work—the turning.

15. Q. Do you recollect when John L. Mason came to your fa-
54 ther's shop in White street to have these moulds for glass jar and glass cover made, and did he bring anything with him at the time to give your father his idea respecting it?

A. He brought wooden models.

16. Q. Have you since that time seen that model?

A. I can't swear to the particular model.

17. Q. If you should see it now could you identify it?

A. As to the general idea of the jar, I could.

18. Q. Please look at the model now shown you, marked "Exhibit 2, J. G., jr., exr.," and state how it resembles or differs from that model which said Mason at that time brought to your father.

A. The idea is similar to the model.

18. Q. What was done with the moulds when they were finished?

A. They were taken to the Jersey City Glass-Works, in Jersey City.

19. Q. Have you any entry of your father's which will show the time of the making of these moulds for glass jar and glass cover? If so, please refer to it.

A. I have; it is in his memorandum, made by him. I here produce it.

20. Q. Please give the entry which is marked in said book "J. G., jr."

A. "John L. Mason's screw-top quart jar, and cover for ditto, $30.00. J. G., jr."

21. Q. Under what date is this entry?

A. Under June, 1859.

(The book is put in evidence for identification as defendant's Exhibit 4, H. Brooke, J. G., jr.)

22. Q. Did you see any of the glass jars and glass covers which were obtained from the moulds you have referred to; if so, where?

A. Yes, sir; in my father's shop.

23. Q. How long was it after the sending of the moulds over to the Jersey City Glass-Works?

A. A short time—within a few days.

24. Q. Where did your father reside at that time?

A. In Jersey City, opposite the glass-works.

55 25. Q. Please state how such jars and covers were blown; that is to say their construction, so far as the neck of the jar, the cover, and the joint made at the neck of the jar, with the cover, is concerned.

(Objected to as leading.)

A. The jar was blown in such a manner that there was a flat shoulder above the screw, and the neck above the shoulder. The cover was so made that it rested on top of the shoulder, overlapping the neck on the jar.

26. Q. How was the glass cover retained to the neck of the jar?

(Objected to, as the witness has not said that the cover was retained, and also as leading.)

A. By a sheet-metal screw.

27. Q. Could you see the interior of the jar looking through the cover at the top when the cover was fastened down to the neck of the jar by the sheet-metal screw?

(Same objection as above.)

A. Yes, sir.

28. Q. Do you know how these glass jars and glass covers came to your father's shop, as you have stated, in answer to question 22?

A. My father brought them.

29. Q. Were they fitted up complete?

A. No, sir.

30. Q. What did they lack?

A. There was merely the glass—no sheet-metal screw-ring?

31. Q. Had they or any of them, at any time, a sheet-metal screw-ring at your father's shop, and also any rubbers on them?

A. I am not positive, but I think I saw them with rubbers and sheet-metal screw-rings, or afterwards; I can't say positive as to the rubbers.

56 32. Q. Please look at jar marked "Defendant's Exhibit 3, H. B. J. G., jr.," now shown you, and state how, if at all, that resembles or differs from the jars which you so saw at your father's shop so fitted up?

A. It resembles the jars at my father's shop.

33. Q. Did your father ever make for John L. Mason any other moulds for glass jars and glass covers, similar to those you have referred to as having been made in June, 1859?

A. No, sir.

34. Q. What became of the patterns of the moulds made for John L. Mason in June, 1859; have you made search for them, and could you find them?

A. I do not know; I have searched for them, but cannot find them?

35. Q. Had your father made moulds for screw-neck fruit-jars for John L. Mason previous to the year 1859; if so, how, if at all, did they differ from the present moulds referred to, in which jars and covers like Exhibit 3 were blown?

(Objected to as leading.)

A. He had; to make jars under Mason's patent of 1858.

36. Q. Did such moulds require a mould for the pressing of covers to be used with the jars which would be blown on them?

A. No, sir.

37. Q. What kind of a cover was used with the jars which were blown in such previously made moulds?

A. Sheet-metal screws.

38. Q. Where was the joint made between these sheet-metal screw-covers and the glass jars?

A. On the shoulder of the jar below the screw.

39. Q. How many of the glass jars and glass covers blown in the June, 1859, moulds, were brought to your father's shop in White street?

A. About three.

40. Q. Do you recollect what became of those glass jars and glass covers? And state if you have any of them yet.

57 A. They were taken away from the shop by Mr. Mason; I can't say how many there were taken.

41. Q. Did you see these moulds of June, 1856, after they went over

to the Jersey City Glass-Works, and do you know what became of them?

A. Yes, sir. I don't know what became of them.

42. Q. Do you know how the edges of the glass covers were constructed for these glass jars which were blown in the jar-mould of June, 1859?

A. They were made like Exhibit 3.

43. Q. For what purpose, if you know, were they so made?

A. For the purpose of sealing the jar.

44. Q. In what way were the edges to seal the jar?

A. They were to rest on the shoulder of the jar, below the neck.

45. Q. Was there anything to intervene between them and the surface of the shoulder?

A. I believe there was to be a rubber gasket.

46. Q. Did you hear John L. Mason state the object of this form of jar over his threaded-neck jar, made according to the patent of 1858, with sheet-metal covers?

A. I understood it was to keep the fruit in contact with glass only.

(Objected to as hearsay.)

47. Q. From whom did you understand this, and when?

(Same objection.)

A. I can't say from whom; it was at the time—about the time—that the work was being done.

And being cross-examined by Mr. Witter, he says:

48. X Q. How do you know that the glass jars which you saw in your father's shop were made from the moulds spoken of as made in June, 1859? Did you see these jars or covers blown yourself from these moulds? Might they not have been made from other moulds?

58 A. I understood from my father that they were jars out of the mould; I did not see them made.

(Objected to as hearsay.)

Further cross-examination of this witness suspended until November 20, 1873, at 4 p. m.

JOSEPH GUTMAN, JR,
Examiner.

NEW YORK, *November* 21, 1873, 1 *p. m.*, *No.* 37 *Park Row.*

Present: Counsel for the respective parties as before, and the witness Homer Brooke, for further examination; and, being further examined by Mr. Todd, says:

49. R. D. Q. What became of the glass jars and covers referred to in your 39th answer?

(Objected to as new matter, not touched upon in the cross-examination.)

A. I believe they were taken away by Mr. Mason.

50. R. D. Q. Do you recollect when he took them away; also, when he took away the model? (Defendants' exhibit 2.)

(Same objection.)

A. No, sir.

51. R. D. Q. Were these jars perfect at the neck and part where the glass cover set on them?

(Same objection.)

A. They were perfect as far as they showed the construction of the moulds.

HOMER BROOKE.

Subscribed and sworn to before me this 21st day of Nov., 1873.

JOSEPH GUTMAN, JR.,
Examiner, &c.

Adjourned to November 24, 1873, at 1 p. m.

JOSEPH GUTMAN, JR.,
Examiner, &c.

59 NEW YORK, *November* 21, 1873—11 a. m.

Present: Counsel for the parties.

Examination adjourned to East 28th street, New York, to accommodate invalid witness.

NEW YORK, *November* 21, 1873, *East 28th street.*

ELIZA ANN MASON, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by Mr. Todd, deposes and says:

1. Q. What is your name, age, residence, and occupation?

A. My name is Eliza Ann Mason.

2. Q. State if you are the wife of John L. Mason.

A. Yes, sir.

3. Do you know of your husband's having in his possession a model for an improvement in fruit-jars?

A. Yes, sir.

4. Q. Could you identify such model were you to see it?

A. Yes, sir; I think I should.

5. Q. Please look at the model of jar and cover marked "Defendants' exhibit 2, J. G., jr., exr.," and state if you saw that model with your husband, John L. Mason.

A. Well, I know that this is one that he had by the looks of it.

6. Q. Can you recollect the time when you first saw it with your said husband?

A. It is as much as 14, 15, or 16 years ago—a good many years ago.

7. Q. Did you see at or about the same time a fruit-jar which was made in accordance with said model?

(Objected to as leading.)

60 A. Yes.

8. Q. Please look at the jar now shown you, which is marked "Defendants' exhibit 23," and state how, if at all, it resembles or differs from the jar you have referred to?

(Objected to as improper to question the witness in this manner, without asking her to describe the article, and also as leading.)

(Question withdrawn.)

9. Q. Describe such jar that you saw about the same time that you first saw the model, so far as its neck and cover is concerned.

(Objected to as leading.)

A. It was a quart jar, with a screw-ring top, open in the centre. It was a glass cover, with a ridge around the top.

10. Q. Please look at the jar and glass cover now shown you, marked "Defendants' exhibit 23," and state how, if at all, it resembles or differs

from the jar and cover you saw about the same time you first saw said wooden model.

(Objected to as leading, and for the reasons stated to question 8.)

A. I can't tell. Do you mean what the difference is from the first patent?

11. Q. I mean how does this jar and cover (Exhibit 23) resemble Mr. Mason's improved jar, which you say you saw about the time you first saw the wooden model?

(Objected to, as the witness has not said anything about an improved jar, and for the reasons stated to question 10.)

A. It does resemble it; it resembles the last improvement.

12. Q. Please state how old you are, and if you are in feeble health.

61 A. I am 55 years of age, and my health is very feeble, more so than it has been. I am under the doctor's care.

13. Q. Are you hard of hearing?

A. Yes, sir; I am hard of hearing—sometimes more so than at others.

14. Q. Did Mr. Mason say anything about getting a patent on this last improvement of his, and why, if at all, he did not proceed to get a patent for it?

(Objected to as hearsay.)

A. I asked him why he did not get a patent on the last improvement. He said he thought he would wait a spell; that he had not the means, and thought he was going to have trouble with his first patent.

And being cross-examined by Mr. Witter, counsel for defendant:

15. X Q. When was it he said he had not the means; was it about the time when he showed you the jar you have spoken of?

A. It was some time after he had the first patent—the old patent; some years after.

16. X Q. About how many years ago?

A. I think as much as 8 or 9 years.

ELIZA ANN MASON.

Subscribed and sworn to before me this 21st day of Nov., 1873.

JOSEPH GUTMAN, JR.,
Examiner, &c.

Adjourned to same day, at 1 p. m.

N. Y., *November* 20, 1873.—11 a. m.

Present: Counsel for the respective parties as before.

CHARLES W. GRAY, a witness of lawful age, produced on the
62 part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by Mr. Todd, counsel for complainant, deposes and says, as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is Charles W. Gray; I am between 39 and 40 years old; I reside at No. 337 Fifth street, Jersey City, N. J.; I am salesman for Colgate & Co., soap manufacturers.

2. Q. Do you know John L. Mason; if so, when did you first become acquainted with him?

A. I do; I became acquainted with him in about 1859—1858 or 1859.

3. Q. Whom were you employed with when you first became acquainted with John L. Mason?

A. With Augustus Durmer.

4. Q. Have you any knowledge of fruit-jars and covers being made for John L. Mason?

A. Yes, sir.

5. Q. When and for whom were you employed at the time?

A. I was employed by Reed, Thompson & Co.; it was in 1859.

6. Q. Of what material were these jars and covers which were so made for John L. Mason by Reed, Thompson & Co.?

A. Glass.

7. Q. What time in 1859 was this?

A. I think it was in the summer of 1859.

8. Q. How many of these glass jars containing glass covers were there blown in all?

A. A dozen and a half to two dozen.

9. Q. What became of them?

A. Mr. Mason got them.

10. Q. Did he get all of them?

A. He got all that were good of them.

11. Q. What became of the rest of them?

A. Those that were not good were generally thrown in the waste-barrel; always thrown in the waste-barrel.

63 12. Q. Do you know what kind of tops or necks these jars had?

A. They were a screw-neck jar.

And being cross-examined by Mr. Witter, counsel for defendant, he deposes and says:

13. X Q. I will read from the cross-examination, from a printed copy of your cross-examination in the case of Rowley against Gibney & Goble, the 31st, 32d, and 33d cross-questions and the answers to them:

"31. X Q. 'What was the particular construction, if you know, of these covers you refer to?—A. They were glass covers to fit on top of the jars.—32. X Q. Do you know anything more about them than that?—A. Nothing more.—33. X Q. You say they were quart screw-top jars; can you describe particularly the construction and arrangement of the screw-top you refer to?—A. No; I cannot; I only know they were screw-top jars."

You were referring to the same jars and covers that you now testify to, were you not?

A. I presume so.

14. X Q. Would you make the same answers to these questions now that you did then?

A. Yes, sir.

15. X Q. Were you with Mr. Mason when he got all of these jars that were good ones?

A. I don't know whether I was or not, sir; I think it is very likely that I was.

16. X Q. Did you examine particularly each jar that was left after Mr. Mason had got all that were good?

A. No, sir; I only examined them before that.

17. X Q. Then, how do you know that he got all that were good?

A. I know he got them; he got them and had them.

18. X Q. Do you think you have answered the last question?

64 A. I think I have.

19. X Q. Have you stated all the reason which you have for thinking that Mr. Mason got all the good ones of those jars?

A. Yes, sir.

CHARLES W. GRAY.

Subscribed and sworn to before me this 20th day of November, 1873.

JOSEPH GUTMAN, JR.,
Examiner, etc.

ELIZA W. FITZGERALD, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by Mr. Todd, counsel for complainant, deposes and says:

1. Q. What is your name, age, residence, and occupation?

A. My name is Eliza W. Fitzgerald; I am 45 years old; I live at No. 47 West 35th street, New York City; I am not engaged in business.

2. Q. Are you a widow of the late W. P. N. Fitzgerald, who was a counseller at law of this city?

A. Yes.

3. Q. Have you a knowledge of you' late husband's having attended to business matters for John L. Mason; if so, what kind of business was it, and over what period did it extend?

A. I know that he did; it was business connected with jars; I could not positively say for how many years; it was a great many; perhaps 15, perhaps 12 years.

4. Q. Where did the interviews between your late husband and said Mason take place?

A. At Beekman street office, certainly; I don't remember whether also at the Chambers street office; frequently also at the house in 12th street, 34th street, and 45th street.

65 5. Q. Where were you living when your husband died?

A. In 45th street.

6. Q. What year was that, and when did you move to 45th street?

A. It was six years ago last September; I moved to 45th street in May of the same year.

7. Q. Did these visits and consultations of Mr. Mason with your husband continue up to about the time of your said husband's decease?

A. Yes.

8. Q. What interest did your husband take in Mr. Mason's jar matters?

A. He took a special interest in them.

9. Q. Do you recollect Mr. Mason's calling at your residence in search of a jar which he had left with your husband?

A. Yes; we were living in Thirty-fourth street.

10. Q. Did he find the jar that he was in search of?

A. I think not.

11. Q. Did he state at the time where the jar had been left?

A. Not to me; I had nothing to do with it.

12. Q. Among what things or effects was search made for the jar at the time?

A. Among books, papers, and models that had been left at the office in Beekman street?

13. Q. Of what material was the jar that he was in search of; did he say?

A. Glass.

And being cross-examined by Mr. Witter, she deposes and says:

14. X Q. I will read you from your deposition taken in the case of Rowley against Gibney and Goble, questions 5, 6, and 7, and the answers thereto:

"Q. 5. Have you any knowledge of the nature or extent of the interest taken by your late husband in these matters? If so, what was it?—A. He took a very special interest in Mr. Mason and his patents. He thought they were the best things of the kind he had ever known.

66 Q. 6. Was there any interruption in those interviews between your late husband and Mr. Mason? If so, where was it and what was the cause of it?—A. He gave up business and went into the Army in 1862. Afterwards was ill for a little over a year and wasn't able to attend to any business. Q. 7. When were these interviews resumed between your late husband and Mr. Mason, and how long did they continue?—A. In Thirty-fourth street early in May, 1866; they continued at intervals until July of the year that he died—in 1867."

Were you in that testimony referring to the same Mr. Mason and to the same jar matters that you have been referring to to-day, in this deposition?

A. Yes.

15. X Q. And the matters therein stated are true, are they?

A. Yes.

And being further examined by Mr. Todd, she says:

16. R D Q. Where did your late husband die?

(Objected to for the reason that this subject had not been touched upon in the cross-examination and that it is not proper redirect examination.)

A. At Washington.

17. R. D. Q. Have you any knowledge or recollection of any interviews, or appointments therefor, between your late husband and Mr. Mason subsequent to May, 1866, and before the death of your husband?

A. After May, 1866, we were in Forty-fifth street, and it was there that he attended to business for Mr. Mason. I don't recollect about dates.

ELIZA W. FITZGERALD.

Subscribed and sworn to before me this 20th day of November, 1873.

JOSEPH GUTMAN, JR.,
Examiner, &c.

67 JOSEPH BAGOT, a witness of lawful age, produced on the part of the complainants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by Mr. Todd, deposes and says:

1. Q. What is your name, age, residence, and occupation?

A. My name is Joseph Bagot. I am 54 years old. I reside at the city of New York. I do business at No. 31 Fulton street. I am a dealer in curiosities, shells, birds, animals, aquaria, &c.

2. Q. Do you know John L. Mason? If so, how long have you been acquainted with him?

A. I do. I have known him since somewhere between 1850 and 1855.

3. Q. Have you had knowledge of John L. Mason's fruit-jar, which had a glass thread on the neck, and an overlapping zinc sheet-metal

cover; and had you a knowledge of the manufacture of such fruit-jars and covers?

A. I had.

4. Q. Have you any knowledge of John L. Mason's having an improvement on such jar and cover, and did he ever show you anything representing such improvement?

(First part of this question objected to, if it should turn out that hearsay evidence is called for.)

A. I have seen a jar claimed as an improvement. He showed me the jar itself that he made as an improvement, or I have seen it.

5. Q. Did he ever show you a model representing the improvement?

A. He did—representing the same idea.

6. Q. Please describe this model.

A. Well, he showed me, when he first spoke to me of the im-
68 proved idea, a wooden model, and the wooden model had a cap. The cap was also turned of wood. The cap went over the top of what represented the mouth of the jar, not screwing on to its neck, for that was the representation. Lodging on a shoulder or a ring raised above the shoulder of the bottle, slightly above what we call the heart or shoulder of the bottle. He gave me some explanation. The statement he gave to me was not fully represented in the model he showed me. My impression is that there was no screw represented on the part which he pointed out as where the screw was to come. The screw on the model which he pointed out to was not on the neck, but below a where the cap or cap rested below the seat that the cap rested on.

7. Q. Could you identify that model were you now to see it?

A. I could identify that, or what was similar—what was identical with it.

8. Q. Please look at the model in two parts now shown you, marked "Defendant's Exhibit 2, J. G., jr., exr.," and state how, if at all, it differs from or resembles the model which John L. Mason showed you, as you have stated.

A. This is similar. I can't say that this is the same model, but the idea is identical. There is no screw here, but he gave me the idea that here (pointing to the part marked X) was to come the screw.

(That part of the answer which commences with the words "but he gave me, &c.," objected to as hearsay and is not called for by the question.)

9. Q. Please state when this was that Mr. Mason so showed you the model.

A. Well, I was at Crowleyville, in a glass concern, somewhere about 1859, when I left. I had the management of a glass factory there. He spoke to me about making an improvement in the jars, as they then were; we were making the jars down at the factory. When he
69 showed me the models was probably two years after that, after I had left the business at Crowleyville, N. J., two years more or less; it might have been some months' difference.

(That part of the answer objected to which makes an reference to what Mr. Mason said, or may have said, as hearsay evidence.)

10. Q. Did Mr. Mason state or give you at that time to understand of what material the cover was to be made for the jar which this model represented?

(Objected to as calling for hearsay.)

A. This portion here, which I call the cover, I understood to be pressed-out glass.)

11 Q. You say, in answer to question 9, "We were making the jars then down at the factory;" that is where he spoke to you about making an improvement in the jars as they then were. To what kind of jars have you there reference?

A. I refer to the original Mason jar. The one with a screw on the neck, and the overlapping metal cap or zinc cap; the cap had the gasket under the lower edge of the metal cap.

12. Q. Did John L. Mason say anything to you at the time of his speaking about making an improvement, or at the time of showing you the model referred to, about any trouble with the gasket, that his improvement would obviate?

(Objected to as calling for hearsay evidence.)

A. Well, we had trouble about making these bottles true from the old moulds. The difficulty was on the breast on the upper edge, where the gasket set on the original pattern. His idea was to improve that; not only to have a flatter seat there, but also to obviate the necessity of the cap infringing on the gasket. When I say cap, I mean the metal overhanging cap with the screw in it.

13. Q. Did the overlapping cap on his old jar rest directly upon the gasket and turn on it?

70 (Objected to as leading.)

A. It did.

14. Q. How was Mason's improvement to obviate this turning of the cap on the gasket; did he say?

(Objected to as calling for hearsay evidence.)

A. The gasket resting here, underneath this cap, as in this model, would not be subject to the action, the presure or infringement of the screw; that is it would no be subject to this rotary motion. The gasket would be stationary, and not be subject to be dragged from off its seat; dragged up by the pressure of the screw as it turned.

15. Q. Did Mr. Mason say anything about patenting this improvement?

(Objected to as calling for hearsay evidence.)

A. He did.

16. Q. Did he refer to any obstacle or difficulty in his way of patenting it?

(Objected to a' calling for hearsay and as leading.)

A. Well, he told me several times that he was poor and needed money to carry his things through; that is all I recollect.

17. Q. Did he say anything about any troubles that he was having about his patents or his previous jar?

(Objected to as calling for hearsay, as leading, and the witness has stated that he has said all that he recollects.)

A. Well, he asked me several times to go and see the head man that used to belong to the Screw Company—I don't remember his name—to get some settlement; rights that they held; that he was poor and wanted to get money.

Cross-examination waived.

JOSEPH BAGOT.

Subscribed and sworn to before me this 20th day of November, 1873.

JOSEPH GUTMAN, JR.,
Examiner, etc.

71 JOHN A. LEFFERTS, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by Mr. Todd, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is John A. Lefferts; I am 58 eight years old; I reside at present in Jersey City, N. J.; I am an enameller.

2. Q. Had you ever occasion to visit the Jersey City Glass Works, at Jersey City, N. J., and have shown to you there a fruit-jar and cover, which was stated to be an improvement? If so, when, and who showed it to you?

A. I can't state any nearer than the year, and I judge it to be the year 1860, and the jar was shown to me by one Horatio Reed.

3. Q. What kind of a cover had that jar, and how did it rest on the mouth of the jar and was fastened to the same?

(Objected to as leading.)

A. The cover was of glass, resting on a rubber gasket, and fastened there by the aid of a metallic screw, the thread of which was part and parcel of the jar itself.

4. Q. Where did the gasket rest, having reference to the location or position of the glass thread on the jar?

A. Below the thread.

5. Q. Are you positive as to this last point of the position of the gasket, or place for the gasket resting being below the glass thread on the jar?

(Objected to, as the witness said nothing about a glass thread in the last answer, but only gave the location or position of the gasket as below the thread.)

A. I am not.

72 6. Q. What rested on the gasket?

A. The glass top or cover.

7. Q. Could you identify this jar or a similar one were you to see it?

A. I think I could.

8. Q. Please look at defendant's Exhibit 3, J. G., jr., now shown you, and state how it resembles or differs from the construction of the jar and cover and parts connected therewith, which you say were shown to you by Horatio Reed in 1860.

A. To the best of my knowledge and belief, this is the actual improvement shown to me at that time.

9. Q. Whose improvement or jar was this stated to be, if any one's?

(Objected to as calling for hearsay.)

A. I cannot state now, but I understood it to be that of Mr. Mason.

10. Q. Did you know at that time of the old form of Mason jar?

A. Yes, sir.

11. Q. What kind of a cover had it?

A. A metal cover.

12. Q. Was it in one or more pieces?

A. In one piece.

13. . Where was the rubber gasket on that jar placed?

A. On the body of the jar next adjoining the screw.

14. Q. Why do you fix it as the year 1860 when you were at the Jersey City Glass-Works, and Horatio Reed so showed you the improved jar?

A. I had purchased a patent for a jar known as the Nicholson jar, and Reed proposed to fill these jars with glass instead of enamel. I

was there at that time on that business, and it was at this time that he showed me this improved jar, which I understood to be Mason's.

15. Q. Was this before or after you had got jars in the market made according to the patent which you had purchased?

A. It was after.

73 16. Q. What was the name of the firm, at the Jersey City Glass-Works, where you say Horatio Reed showed you that improved form of Mason jar?

A. Read, Moulds, Thompson & Hazleton.

Cross-examination waived.

JOHN A. LEFFERTS.

Subscribed and sworn to before me this 20th day of November, 1873.

JOSEPH GUTMAN, JR.,
Examiner, etc.

Examination adjourned to Nov. 21, 1873, at 11 o'clock a. m.

N. Y., *November* 25, 1873—11 a. m.

Counsel present as before, Mr. A. J. Todd for complainant, Mr. W. C. Witter for defendant, and the witness for further examination.

Examination adjourned to 4.30 p. m. of same day.

JOSEPH GUTMAN, JR.,
Examiner, etc.

N. Y., *November* 25, 1873—4.30 p. m.

Examination of witness Mason adjourned by consent to December 2, 1873, at 1 p. m.

JOSEPH GUTMAN, JR.,
Examiner.

Examination adjourned to Nov. 28, 1873, at 1 p. m.

JOSEPH GUTMAN, JR.,
Examiner.

74 N. Y., *November* 28, 1873—1 p. m.

Met pursuant to adjournment.

Counsel present as before, Mr. A. J. Todd for complainant, Mr. W. C. Witter for defendant.

Counsel for complainant puts in evidence the deposition of Robert Franklin, given in the suit of Samuel B. Rowley vs. John R. Rowley and Henry M. Goble, pending in this court, the witness being now deceased; right to object to the same being reserved by the counsel for the defendant until the next meeting.

ROBERT FRANKLIN, a witness of lawful age, produced before me on the part of the defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by Mr. Todd, counsel for defendants, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is Robert Franklin; age, 46; residence, New Brunswick, New Jersey; book-keeper for the Mason Manufacturing Company.

2. Q. State, if you know, and when, you first became acquainted with John L. Mason?

A. In the summer of 1855, at Chicago, in the State of Illinois.

3. Q. Where, if anywhere besides Chicago, Ill., did you see Mr. Mason, and where subsequently to the summer of 1855?

A. At the city of New York, in 1856.

4. Q. Had you any business with, or did you do anything for, Mr. Mason at New York? If so, what, and when did you so commence?

A. In the fall of 1856 I acted as book-keeper for Mr. Mason.

5. Q. Had you any knowledge of glass jars with blown threads on the neck thereof while you were with John L. Mason? If so, state your earliest knowledge thereof.

75 A. I had, in the fall of 1856, half-gallon jars with glass threads on them, when in Elm street.

6. Q. Please describe the glass thread on such jars.

A. So as to have a top applied to the screw, so as to make it an air-tight jar, with an India-rubber ring underneath the top.

7. Q. How did these tops fasten to the screw on the jar?

A. By having a thread upon them so that they connect in unison with the glass thread on the jar.

8. Q. Do you know who made these tops, and out of what were they made?

A. I do; Mr. Charles Frampton spun them from zinc.

9. Q. About how many of these half-gallon jars did you see?

A. About twenty-five.

10. Q. Do you know what became of any of them?

A. I had two myself; Mr. Mason had some.

11. Q. What makes you recollect the number as being twenty-five?

A. Having counted them when on the bench, and having remarked, "Singular; an odd number."

12. Q. What did you mean by an odd number?

A. By being one over two dozen.

13. Q. Have you got those that you took now in your possession?

A. I have not.

14. Q. Could you identify any of such jars now?

A. I could.

15. Q. Please look at Exhibit 22, now shown you, and state if that resembles or differs from such jars?

A. I am certain that is the jar; it is similar to it, and, as a matter of course, I think it is the same jar.

16. Q. Were there any other jars with blown threads on the neck thereof there subsequent to these twenty-five spoken of; if so, how soon afterwards, and how did they differ from these first ones?

A. I think in the beginning of 1857 there were some quarts,
76 glass jars, made; the difference was in the lower part of the thread, leaving a cavity so as to admit the India-rubber ring.

17. Q. What, if anything, do you know respecting the selling of these last-referred-to jars, and how soon did such selling commence?

A. I introduced them for sale by sample in the early part of 1857.

18. Q. How long did you continue selling them?

A. I cannot recollect how long I was selling them; whenever I went out to take orders, I took them with me as samples, with other goods—screw-top goods.

19. Q. For whom did you sell these glass jars?

A. Mr. John L. Mason.

20. Q. What else had they to make them complete beside the glass jar with the glass screw-thread on the neck thereof?

A. The spun top, or cover with threads, and an India-rubber ring.

21. Q. Have you any knowledge of Mr. Mason being in possession of a model of a fruit jar differing from these glass jars; if so, where did you acquire such knowledge, and what was such model?

A. I have seen several times a wooden model for the jar in Mr. Mason's dwelling; in the cupboard in a room of Mr. Mason's dwelling; it was a wooden model, and a turned cover placed thereon of wood.

22. Q. Do you recollect of what wood that model and turned cover was?

A. I cannot state what wood, but that for the jar was light-colored, and the cover was of darker color.

23. Q. When was it that you saw this model of jar and cover first in that cupboard?

A. In the fall of 1859, I think.

24. Q. What makes you think it was in the fall of 1859?

A. For the reason I removed from Green Point to 19th street, near 7th avenue, in New York, taking rooms two doors from where Mr. Mason resided.

25. Q. When did you remove from Green Point?

A. In the latter part of the summer, 1859.

77 26. Q. Did you frequently visit Mr. Mason's house after you removed to New York from Green Point?

A. Very frequently; my wife almost daily.

27. Q. Have you any knowledge of having seen an open-top screw-ring with Mr. Mason; if so, when first, and where, and for what jar was it intended, if you know?

(Question objected to as most manifestly leading, and so worded as to be highly suggestive to the witness.)

A. I have seen a great many screw-rings. The first time, to the best of my knowledge, was on this similar half-gallon jar—what you have on the table there—(referring to Exhibit 22)—in the cupboard in a room in Mr. Mason's house in the fall of 1859.

28. Q. How do you fix it as being in the fall of 1856 when you commenced to act as book-keeper for Mr. Mason?

A. Because at that time—it was in the fall—we moved to Elm street.

29. Q. When did you leave Chicago, Illinois, for New York?

A. In the spring of 1856.

30. Q. How do you fix this date?

A. By the birth of a child in Chicago, December 5th, 1855.

The witness being cross-examined, testifies as follows:

31. X Q. Do you fix the date of the birth of this child from memory, or how?

A. By being a child in arms when we arrived in New York; that is, my family and I.

32. X Q. Have you any record of the birth of that child?

A. I have, entered in a book, Scenes in the Life of Our Saviour, a bound book.

33. X Q. Entered at the time the event took place?

A. The day following; after the child was weighed, to see what its weight was.

78 34. X Q. You say Mr. Frampton made the tops for the jars like Exhibit 22. How do you know that? Did you see them made?

A. I did not see him spin them; but saw them after they were spun, when in Elm street. Mr. Frampton stated that he spun those tops upon a brass chuck, which he showed me.

35. X Q. Then you' *a*cknowledge that Mr. Frampton made them is derived from what Mr. Frampton told you, is it?

A. It is, he being the only person that at that time had spun any tops, to my knowledge.

36. X Q. Describe fully and particularly the shape and construction of these caps that Mr. Frampton spun, as you say, and which you saw.

A. They were flat tops, with threads spun thereon, to screw on the top of the half-gallon glass jar, of zinc.

37. X Q. What do you mean by the words "flat tops" in your answer?

A. What I mean is, or the cause of my making that remark was, that when the quart-jar tops were spun they were rounded.

38. X Q. Rounded, where?

A. On the top.

39. X Q. Do you mean by being rounded on the top that the centre portion of the top of the cap was higher than the edges; or what do you mean?

A. I mean that the top was raised or spun so as to form a round surface or slight grade.

40. X Q. The caps to both of these jars referred to in your last answers were solid or continuous across the top, then, were they?

A. One piece of metal spun up; one flat piece of metal spun up into a top on the chuck.

41. X Q. You say there were twenty-five of these half-gallon jars, and you fix the number because, having counted them, you remarked, "Singular; an odd number." Was there anything more singular in the fact of those jars being an odd number than if they had been an even number?

79 A. No, sir; it caused me to remember there were twenty-five.

42. X Q. What became of those two of jars which you had?

A. When we broke up housekeeping, I presume they were sold.

43. X Q. Do you recollect of seeing them when you broke up housekeeping?

A. I do, sir.

44. X Q. When was that, and where did you then live?

A. I resided then in Green Point. It was in 1859, in the fall, I removed to New York.

45. X Q. Have you been in the employ of Mr. Mason since the fall of 1856, when you began to act as book-keeper for him?

A. I have; I have been in his employ since then, at different times, and with others in the screw-top business.

46. X Q. How much of the time since the fall of 1856 have you been in the employ of Mr. Mason?

A. On and oh two or three years, I suppose, counting the time altogether.

47. X Q. How long have you been in the employ of the Mason Manufacturing Company?

A. About five months.

48. X Q. Were you in Mr. Mason's employ in 1859, when you or your wife were at his house almost daily?

A. I believe I was.

49. X Q. Don't you know whether you were or not?

A. I think I was.

(Question repeated.)

A. To the best of my knowledge, I was.

50. X Q. You say you saw a wooden model several times in a cup-

board in Mr. Mason's house. Did you see that model anywhere else except in that cupboard?

A. No, sir.

51. X Q. Have you heretofore been examined as a witness on behalf of Mr. Mason, in suits or proceedings connected with fruit-jars; and, if so, how often?

(Objected to as too general and indefinite.)

80 A. No, sir.

52. X Q. Have you been examined as a witness on the part of Mr. Mason, in suits or proceedings in the Patent-Office or elsewhere, concerning matters or machines used in the manufacture of fruit-jars or parts or caps to be used with such jars?

(Objected to as immaterial and indefinite.)

A. I have been a witness on the suit for screw-tops.

53. X Q. Screw-tops for fruit-jars?

A. Yes, sir.

54. X Q. When, and how often?

A. In 1857 or 1858; I can't say which; about that time, I think.

55. X Q. Was that the only time?

A. The only time on screws; but screw-chucks I was.

56. X Q. How many times have you been a witness for Mr. Mason?

(Objected to as too general, immaterial, and indefinite.)

A. This will make the third time, I believe.

The witness being re-examined, testifies as follows:

57. R. D. Q. Did you see the screw-tops for all the twenty-five half-gallon jars referred to by you?

A. I saw several screw-tops, but how many I cannot say.

(Although counsel for complainant has not called for the book containing the entry of the child's birth, referred to by the witness, counsel for defendants will have the witness produce it for examination of counsel for complainant, if the latter desires it.

Counsel for complainant leaves defendants' counsel to put in his evidence as he himself elects and deems best.

81 The witness is requested by defendants' counsel, in consequence of counsel for complainant's reply, to produce the book here for the inspection of counsel, and in order that the complainant's counsel may ask any questions respecting the same, should he so elect.)

R. FRANKLIN.

Examination adjourned to Dec. 1, 1873, at 1 p. m.

JOSEPH GUTMAN, JR.,
Examiner.

N. Y., *December* 1, 1873—1 p. m.

Present, counsel as before.

STEPHEN R. PINCKNEY, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by Mr. Todd, counsel for complainant, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is Stephen R. Pinckney; I am 50 years old; I reside at the city of New York; I am president of the Consolidated Fruit-Jar Co.

2. Q. Do you know the Focer jar, so called; and, if so, will you please produce one?

(Objected to as immaterial.)

A. I do know such jar; I here produce one; it is known as the Focer jar.

(Jar put in evidence, and marked "Exhibit Focer Jar, J. G., jr.")

82 3. Q. Please state what are the defects or objections to that jar, and whether such defects and objections have prevented it from coming into use to any considerable extent.

(Objected to as immaterial, and for the reason that the proper foundation has not been laid for an expert examination.)

A. The double screw acting upon the neck of the jar and the cover simultaneously move the cover while it is being impinged on the rubber or gasket and ferule, the gasket or rubber preventing in many instances an air-tight joint. It is also an expensive jar to manufacture, by reason of the ring being a simple ring and a thread on the cover. They have not been used to any extent.

And being cross-examined by Mr. Witter, he says:

4. X Q. Where did you get that jar?

A. It was sent to the old Mason Manufacturing Co. by Whitney Bros.

5. X Q. Do Whitney Bros. deal in them?

A. I never heard of their dealing in them.

6. X Q. How came they to have one?

A. I believe they own the patent.

7. X Q. How are you able to say that these jars have not been used to any extent? Did you mean to answer that question absolutely, or that you did not know of their being used to any extent?

A. I have been informed by dealers in jars that they could not sell them, and in a five-years' experience in the jar business have never heard of a person selling any of them.

S. R. PINCKNEY.

Subscribed and sworn to before me this 1st day of December, 1873.

JOSEPH GUTMAN, JR.,
Examiner, &c.

Adjourned to December 2, 1873, at 1 p. m.

NEW YORK, *December* 2, 1873—1 p. m.

Examination adjourned to 2.30 p. m. same day.

83 NEW YORK, *December* 2, 1873—2.30 p. m.

Present: Counsel for the respective parties, as before.

Counsel for complainant puts in evidence certified copy of the Commissioner's decision in the matter of the interference of Mason vs. Rowley. It is marked "Complainant's Exhibit Commis'r's Decision, J. G., jr."

(Objected to for the reason that the decision is not a decision rendered between the parties to the suit, nor upon the subject-matter of this suit, and that it is no evidence conclusive or otherwise in this court of any of the parts therein considered.)

Complainant's counsel also puts in evidence certified copy of the decision made by one of the justices of the supreme court of the District of Columbia, May 1, 1869, in the same matter. It is marked "Complainant's Exhibit" D. C. S. C. Decision, J. G., jr.

HENRY MITCHELL, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to

testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by Mr. Todd, says:

1. Q. What is your name, age, residence, and occupation?

A. My name is Henry Mitchell; I am 53 years old; I live at Brooklyn, N. Y.; I am employed in the Nassau Gas-Light Co. at present.

2. Q. State whether you ever held John L. Mason's patents relating to fruit-jars and their manufacture, granted to him prior to the year 1860.

A. I did.

3. Q. Into whose possession did they subsequently pass?

A. The Sheet-Metal Screw Co. L. R. Boyd was one of the members of that company.

84 4. Q. Do you know that there was any other person who had a large or substantial interest in that company, with the exception of L. R. Boyd? And state whether you were ever with that company.

A. Yes, sir; I had interests there, and another, by the name of David A. Barclay, which formed the company. We were equal when we started. Mr. Boyd bought Barclay out, when I was away out of town. I forget for what sum. After I came back, Mr. Boyd said to me that the deputy sheriffs were there asking for me frequently; and one morning Mr. Boyd met me near Burling Slip, near the office, and stated to me that he wanted me to walk around with him, and we walked towards Wall street ferry. He stated that there had been a sheriff there to see me, and that he did not want me to go to the office for a week, and would meet me every morning at 10 o'clock, and report to me how the business was going on. Probably in about five or six days after this appointment, every morning, at the Wall street ferry, he offered me a hundred dollar bill to assign my stock to him, assuring me that he would be honorable to me, and did not want the business broken up. I accepted, and supposed that he meant to be honorable with me.

5. Q. Did you receive any other consideration for the transfer of these patents?

A. I did not.

6. Q. About when did you transfer these patents to the Sheet-Metal Screw Co.?

A. I think it was the summer of 1863—July or August, to the best of my memory.

7. Q. Did you ever fail in business; if so, about when?

A. In May, 1861, I think.

8. Q. State whether or no the said Boyd, or the Sheet-Metal Screw Co., worked, and continued working, under the said patents after you so transferred them.

A. Yes, sir; until they ran out, I think it was.

H. MITCHELL.

Subscribed and sworn to before me this 2d day of December, 1873.

JOSEPH GUTMAN, JR.,
Examiner, &c.

85 (Counsel for complainant puts in evidence exhibits heretofore referred to in evidence, exhibits 1, 2, 3, 23, 24, 22, 25, 31.)

Examination adjourned to December 3, 1873, at 3 p. m.

JOSEPH GUTMAN, JR.,
Examiner, &c.

HENRY MITCHELL recalled by Mr. Todd, and being further examined, says:

9. Q. When did you purchase all of John L. Mason's patents, and who, if any one, joined in that purchase with you?

A. October or November, 1859, I think. Andrew M. Bennett, I think, was associated with me at the time, or shortly afterwards.

10. Q. Who, if any one, previously or up to the time of that purchase held any interest in those patents?

A. Benjamin A. Payne, Joseph A. Frazier, John L. Mason, and myself, which constituted the firm of Payne & Co. They were working under license.

11. Q. From whom did you receive the title to the patents, and how did you arrange about the license? Did you receive that, or was it still outstanding after the purchase?

A. The license was cancelled on the 3d of November, 1859, I think—on the 1st or 3d of November, 1859. We, Bennett and myself, received the title to the patents from John L. Mason.

12. Q. What was Mason doing at the time that Payne & Co. held license under his patents?

A. He was with the company for a little while, and afterwards went to glass manufacturing in New Jersey.

13. Q. For whose account did he manufacture glass?

A. On his own account.

14. Q. To whom was it furnished?

A. To Payne & Co. The bills were made out in his own name, though Payne & Co. supplied him with means to a limited amount.

86 15. Q. Was this while they held the licence under Mason's patents?

A. I think it was.

16. Q. Did you continue to manufacture under his patents until your failure?

A. No, sir.

17. Q. Did you for any portion of the time?

A. I think not after November, 1859.

18. Q. I mean you and Bennett?

A. Oh, yes, sir; I continued until May or June, 1861.

19. Q. Was that license to Payne & Co. an exclusive license?

A. It was, to the best of my knowledge.

20. Q. In what did you pay for said patents?

A. $30,000 we agreed to pay—in notes.

21. Q. How much of the amount did you ever pay of those notes?

A. $5,000 or $6,000, to the best of my knowledge.

22. Q. Did you know, or ever learn, of Mr. Boyd's having purchased a mortgage given to secure the payment of these notes, which mortgage John L. Mason had assigned to a dealer in soda-ash, to secure the payment of some of these notes so given to said Soda-Ash Company, and of said Boyd's having foreclosed said mortgage on the said Mason patents, and thus obtained Mason's equitable title thereto?

(The testimony of this witness on this subject is here objected to, for the reason that it is immaterial to the issues of this case; and this particular question is further objected to because it calls for hearsay evidence, and because it is leading, and to such an extent that defendant's counsel is in doubt whether the complainant's counsel intends himself for the witness.)

A. I did not, until some time afterwards. It was done some time when I was out of town.

(Defendant's counsel here makes an additional objection to all
87 of this answer which follows the words "I did not," for the reason that complainant's counsel, immediately after these words, asked a further question of the witness, in response to which the witness made the rest of the answer.)

(Complainant's counsel objects to the statement made as not giving all the facts, and as improper and uncalled for.)

23. Q. Is said Boyd now living?

(Objected to as immaterial, and utterly inconsequential to any of the issues in this case.)

A. I believe not.

24. Q. When it was done, as you state, were you in the employ of the company?

(Objected to as ambiguous and as immaterial.)

A. I think not. I think I was one of the members of the company, but away travelling for the business of the company.

H. MITCHELL.

Subscribed and sworn to before me this 4th day of December, 1873.

JOSEPH GUTMAN, JR.,
Examiner, &c.

Adjourned to December 8, 1873, at 11 a. m.

NEW YORK, *December* 3, 1873—3 p. m.

Present: Counsel as before.

Examination adjourned to December 4, 1873, at 3 p. m.

JOSEPH GUTMAN, JR.,
Examiner, &c.

88 NEW YORK, *December* 4, 1873—3 p. m.

Present: Counsel as before.

(Counsel for complainant puts in evidence the certificate of death of Robert Franklin.)

It is marked "Complainants' exhibit Franklin," J. G., jr., exr.

STEPHEN R. PINCKNEY, recalled by Mr. Todd, and, being further examined, says:

1. Q. Please state if the Robert Franklin referred to in the certificate of death marked "Exhibit Franklin" was the same Robert Franklin who gave the deposition in the case of Salmon B. Rowley agst. John R. Gibney and Henry M. Goble, which deposition is in evidence in this case.

A. He was the same person.

S. R. PINCKNEY.

Subscribed and sworn to before me this 4th day of December, 1873.

JOSEPH GUTMAN, JR.,
Examiner, &c.

(Counsel for defendant here seasonably objects to the deposition of said Robert Franklin being used on the hearing of the case, on the ground, first, that it was not taken in a case to which the parties were the same as they are in this case; second, that it was not taken in a case of which the subject-matter was the same as in this case.)

N. Y., *November* 24, 1873.—1 p. m.

Present: Counsel for the respective parties, as before.

To save the calling of Jane F. Brooke, it is consented by the respective counsel that, if present, she would testify as follows: "That
89 she is the widow of the late William Brooke; that she fixes the fact of the removal of her late husband's business to the city of *the city of* New York by the following receipt:

Received, New York, April 1, 1859, in full of W. Brooke, seventeen $\frac{34}{100}$ dollars, for one month's rent and power of room No. 22 of the New York and Harlem freight-railroad depot, situated on White street, between Centre and Elm street.

$17.34. THOS. BENNETT, *Agent.*

That she has got the receipt for every succeeding month of that year; that she has not got any receipt previous to the first one, of which a copy has been taken as above; that she knows this receipt was the first one, for the first month after he went there, because her husband always handed her the receipts when he paid them; and that she has got all her late husband's receipts up to the time of his death; that she became administratrix in February, 1868.

JOHN L. MASON, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by Mr. Todd, deposes and says, as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is John L. Mason; I am 52 years old; I reside at Camden, N. J.; I am a manufacturer.

2. Q. State what is your earliest knowledge of sheet-metal screws and glass fruit-jars, or what year did it commence?

A. I can't recollect particulars in regard to the subject-matter inquired about; it has been so long ago that I have forgotten, and for the last year I have tried to banish the whole thing out of my mind.

90 3. Q. Did you not invent, patent, and make a fruit-jar, which is represented by the fruit-jar and cap which I now show you, marked "Exhibit 24, J. G., jr., exr.," which is here put in evidence?

A. I don't recollect whether I did or not; if I did, the patent speaks for itself.

4. Q. Did you not testify, on or about March 13, 1870, in a suit then pending, that your earliest knowledge of sheet-metal screws was in the latter part of 1853, and that your earliest knowledge of glass-thread fruit-jars was in the early part of 1856?

(Objected to as leading, and also for the reason that it does not appear from what the counsel for the complainant is reading or quoting.)

A. I don't recollect now.

5. Q. Is not that the fact, that your earliest knowledge of the sheet-metal screws was in the latter part of 1855, and that your knowledge of glass-threaded fruit-jars was in the early part of 1856?

A. I don't recollect now.

6. Q. Do you try to recollect?

A. No, sir; I have tried to banish the whole thing from my mind.

7. Q. Why have you tried to banish the whole thing from your mind.

(Objected to as immaterial and frivolous.)

A. I have business enough of my own which absorbs all my interest and mind without thinking of other matters.

8. Q. Why will you not now try to recollect? Please answer that question.

A. That is a question I cannot answer.

9. Q. Why not?

A. I don't know as I have any control over my mind or memory at present.

10. Q. Please state why you have no control over your mind so as to be able to answer the question propounded to you?

91 I have answered the question in my last answer; I have no other answer to give to the question.

11. Q. Will you testify that your earliest knowledge of sheet-metal screws was not in the latter part of 1855, and that your earliest knowledge of glass-threaded fruit-jars was not in the early part of 1856?

A. I won't testify anything about it; I don't recollect.

12. Q. Did you not testify in the month of March, 1870, when asked to describe such glass-threaded fruit-jars, that it was a half-gallon fruit-jar, with a glass thread terminating into the shoulder about the top of the neck?

A. I can't recollect.

13. Q. Was not such a jar the first one you originated, or one of your earliest jars? I now show you the jar, defendants Exhibit 22, J. G. jr., exr., and ring and cover for same, which are not put in evidence.

A. I can't recollect; it has been so long ago that I have forgotten all about it.

14. Q. Do you not identify that jar as being one of your jars? Please look at the jar before you answer the question.

A. I don't know whether it is or not.

15. Q. State whether it is not similar, if you cannot identify it by a personal inspection.

A. I cannot tell anything about it.

16. Q. If there are any differences, state them.

A. I don't know anything about it.

17. Q. If you are not sure of its being the identical jar, can you not make a statement as to whether it is like or different from the jar which you then produced; and will you do so?

A. I don't recollect anything about it, and I can make no statement in regard to it.

18. Q. Why will you not try to recollect something about it so as to state how it resembles or differs from those early jars which you first produced?

(Objected to, as it does not appear that he has produced any jars.)

92 A. I banished the whole subject-matter from my mind, and I am not here for the purpose of trying to remember.

19. Q. Did you not testify at the time referred to, about March, 1870, in the suit brought by Salmon B. Rowley against John R. Gibney and Henry M. Goble, that you first originated or devised such glass-threaded fruit-jars; that you came to devise it because you had an idea that a glass-jar with a screw-top or screw-neck would be much better than the tin cans that were then in market; and by making a glass screw upon the neck of the jar you could make a glass-threaded or screw-neck jar at about the same cost as the ordinary plain jar was made, and by making the jar in glass you would get rid of the objections that were made against tin cans with lead screws; and is not such the fact?

(Objected to, as complainant's counsel appears to be reading from some

printed pamphlet of which neither the court or defendant's counsel has any legal knowledge.)

A. I don't recollect, at the present time, anything about it.

20. Q. Will you recollect about it, and answer both branches of the last question?

A. I can't recollect.

21. Q. Have you tried to recollect; and, if not, will you try?

A. I have not tried and I have no inclination to try.

22. Q. Do you mean to say that you will not try to recollect about it?

A. I mean to say that I cannot recollect.

23. Q. Question repeated.

A. I answer the question by saying that I cannot recollect.

24. Q. Will you answer the 22d interrogatory?

A. I mean to say by giving the same answer; I can't recollect.

25. Q. Please answer my last question, yes or no.

A. I believe I answered the question in my own way, and will keep answering.

93 26. Q. Do you refuse to answer the 22d question responsively?

A. I do not refuse to answer the question, believing that I have already answered it.

27. Q. Now, state whether you will try to recollect about the construction and making of this early jar.

A. I am not going to try to recollect anything about the matter. I have drawn all from my mind, and don't want to bring it back.

28. Q. Do you not recollect testifying in the same suit that you had such a jar manufactured; that you took the jars; had some sheet-metal screw caps made for them; put a rubber gasket upon the outside of the screw neck, at the bottom of the screw neck; that you found, when screwing the cap down on the gasket, that it crowded the rubber away from the neck, from the place where the glass screw terminates at the shoulder, thereby making a very unsafe joint for a fruit-jar; that, to get rid of that difficulty, you made a tin cap, soldered a rim upon the flat disc of tin, put a rubber round the rim so that it would fill the mouth of the jar, and made a joint at the top of the neck by having a screw-ring to catch over the tin, pulling it, as it were, down to the seat and thereby making a tight joint?

(Same objection as to question 19.)

A. I don't recollect.

29. Q. Is not such the fact, irrespective of your recollection, if so testifying?

A. I don't recollect now.

30. Q. Do you mean that you do not recollect, or do not wish to recollect now, as to the matter inquired about? Please give a definite answer to this question.

A. I do not recollect.

31. Q. Will you swear that it is not because you do not wish to recollect that you will not answer the question?

A. I don't recollect at present anything about it.

32. Q. Please answer my last question responsively, which is here read again.

94 A. I give the same reply as the last.

33. Q. Will you swear that it is not because you do not wish to recollect that you will not answer the question? Please give a direct answer to this question?

A. I repeat my former answer.

34. Q. Do you refuse to answer the 31st interrogatory?

A. I don't refuse any answer, but can give no answer to the question than I have already given.

35. Q. Did you not further testify on that suit in March, 1870, that after making the jar which you had described, that you made a quart-jar whose glass-thread terminated before reaching the shoulder, leaving a recess around the neck and at the base of the glass-thread, where the rubber-ring would lie in and hold itself in place when the sheet-metal screw-cap was screwed down upon the gasket, and thereby you got entirely rid of the difficulty which you found in the half-gallon jar, (meaning the jar, defendant's Exhibit 22,) which you had already described?

(Same objection as to Q. 19.)

A. I don't now recollect.

36. Q. Is not such the fact, whether you recollect testifying so or not?

A. I don't recollect now.

37. Q. Do you choose to recollect now about it.

A. I have answered the question. I repeat the same answer.

38. Q. Question repeated.

A. I repeat the same answer.

39. Q. Why will you not answer the 37th interrogatory, and do you refuse to do so responsively?

A. I don't refuse to answer it. I believe I have already answered it.

40. Q. Did you not testify that Exhibit 1, jar containing an over-lapping screw-cover, was the jar to which you had reference as having improved, after having made the half-gallon jar?

(Same objection as to Q. 19.)

95 A. I don't recollect.

41. Q. Please look at the jar, defendant's Exhibit 1, and state if the glass-thread thereon does not terminate before it reaches the shoulder?

A. I am not here as an expert, and therefore I decline to examine the jar as an expert.

42. Q. Will you examine the jar as to this particular inquired of, so as to see whether it will not refresh your memory so as to enable you to say whether it is like or different from the jar which you so improved?

A. I will not.

43. Q. Why will you not?

A. I have answered the question.

44. Q. Answer the last question by stating why you will not.

A. I have stated that. I will not. That is the only answer I have to give the gentleman.

45. Q. Did you not also testify in that suit and about that time that you improved the quart jar, Exhibit 1, by making the glass-thread terminate before it reached the top, and thereby leaving a plain ring, as it were, to grind the neck of the jar smooth without marring the glass-thread that was on the neck of the jar, thereby producing a jar where glass-thread terminated before reaching the top and before reaching the shoulder, and thereby causing the sheet-metal screw-cap to fit nicely the glass-thread on the jar; and did you not, at the time of so testifying, produce such a glass-threaded jar and cap, which was annexed and marked "Defendant's Exhibit 24, J. G., jr., ex'r," and which is here in evidence and now shown you?

(Same objection as to Q. 19.)

A. I don't now recollect.

46. Q. Please look at the jar and cap then produced in evidence and now produced in evidence, as Exhibit 24, and state whether or not such is the fact.

A. I don't recollect.

47. Q. Did you not at that time testify that jars like such quart-jar and cap, Exhibit 24, had been sold by the thousand grosses?

96 A. I don't recollect.

48. Q. Don't you know that such is the fact respecting the sale of such jars and caps?

A. I decline to answer that question. That can be ascertained from others without me.

49. Q. Why will you not answer it?

A. Because I don't choose to.

50. Q. How can that be ascertained from other sources if it is not so?

A. That is information the gentleman can get himself in any way he has a mind to.

51. Q. Then there was a sale of the jars and caps like defendant's exhibit 24?

A. I decline to answer the question.

52. Q. Why do you decline to answer this question, which does not commit you to the amount of jars and caps which were sold, like Exhibit 24?

A. Because I don't choose to.

53. Q. Is it not the fact that these jars and caps, like defendant's exhibit 24, were first commenced to be sold by yourself?

A. I decline to answer.

54. Q. What reason have you for declining to state?

A. That is my own business.

55. Q. Did you not testify in the suit brought by Salmon B. Rowley against John R. Gibney and Henry M. Goble, that you commenced to sell jars and caps like Exhibit 24, in 1857? It may have been in the latter part of 1856, but you think it was in 1857?

(Same objection as to Q. 19.)

A. I don't recollect.

56. Q. Did you not further devise and improve the fruit-jars?

A. I don't now recollect.

57. Q. I ask you the simple fact of whether you ever made any further improvements, not what you recollected about the improvements themselves? Now, please answer my last question.

97 A. I decline to give any further answer.

58. Q. Do you decline to give any further answer because you cannot or because you will not?

A. Because I have answered the question; I decline to give any further answer.

59. Q. Do you mean to swear that you do not recollect the fact of your having further improved the fruit-jar represented by Defendant's Exhibit 24.

A. I have no further answer to make than what I have already made to the last question.

60. Q. Will not answer the 59th interrogatory?

A. No further than I have already answered.

61. Q. Did you not testify in said Rowley vs. Gibney & Goble case that you did devise and make an improvement in fruit-jars after the changes represented by Exhibit 24 jar, and that you completed such last improvement in the month of June, 1859?

A. I don't now recollect.

62. Q. Is not such the fact?

A. I decline giving any other answer than the answer to the last question.

63. Q. Did you not further testify in said Rowley vs. Gibney–Goble case that you went to a man by the name of Charles Frampton, and had a wooden model made of the invention, with the exception of the thread upon the neck; that you took the model to a man of the name of Brooke, for the purpose of having a mould to make the glass-threaded jar in, and also a model to make the glass covers in; that Brooke made such moulds for jar and cover; that you took the moulds to the Jersey City glass-house; that you there had some jars and covers made by Mr. Horatio Reed; that after you got the jars and covers made you took some of them, fitted them together, and took some away?

(Same objection as to question 19.)

A. I don't recollect.

64. Q. Is not such the fact, that such took place as narrated in my last question?

(Same objection.)

98 A. I decline giving any other answer than the answer to the last question.

65. Q. Do you mean that you do not recollect whether such took place or not, or do you mean that you will not state whether such took place or not?

A. I decline giving any better answer.

66. Q. Did such take place or not?

(Same objection as to question 19.)

A. I decline to state any further than I have already stated.

67. Q. You have not told us whether such took place or not; now, will you do so?

A. I decline giving any further answer.

68. Q. Do you decline to give any further answer because you do not recollect whether such took place or not; and will you swear that you do not recollect whether such took place?

A. I decline to give any other answer than I have already given.

69. Q. Question repeated.

A. The same answer is repeated.

70. Q. Did you not testify in that suit that at the time you gave the order for making the moulds for a screw-neck jar you took a ring with you, and gave directions to Mr. Brooke to make the moulds so that it would produce a screw-neck jar that would fit that ring; that when you went over to the Jersey City glass-house to see if the jars were made you had screw-rings in your pocket, so that you could fit them up right there, and did so; that they were fitted together by a gasket being placed upon the shoulder of the jar, the overlapping cap coming down over the mouth of the jar, infringing itself upon the gasket, the sheet-metal screw-ring being screwed down on the screw-neck, taking hold of the glass cover, pulling it down to its seat?

(Same objection as to question 19.)

A. I don't recollect.

99 71. Q. Will you swear that such did not take place; that you did not do all, as set forth in the last question?

A. I have no other answer to make than the answer I have given to the former question.

72. Q. I asked you in the 70th question whether you recollected testifying to certain facts, and you said you did not. In the 71st question I asked you respecting the particular facts themselves, whether they did or did not take place. Your answer to the 70th is not an answer to the 71st question, unless you say so in so many words. Now, do you mean

to swear that you do not recollect about the occurrence of the particular facts inquired of?

A. I decline to give any further answer.

73. Q. Do you swear that you do not recollect about the occurrence of these facts inquired of, irrespective of your testifying about them about three years ago?

A. I decline giving any further answer than I have already given.

74. Q. Then you decline to give a responsive answer to the last question, do you?

A. I don't decline to give any answer. I believe I have answered the question.

75. Q. Then give a direct answer to the 73' question, without reference to any other answer in your present deposition?

A. I shall give no answer further than I have already given.

76. Q. Is it not true that you took one of these jars so fitted up by you at the Jersey City glass-house to your patent solicitor at the time, Mr. Fitzgerald?

(Same objection.)

A. It has been so long ago, that I do not now recollect.

77. Q. Do you not recollect the fact of taking such a jar to Mr. Fitzgerald?

A. I don't now recollect?

78. Q. Do you recognize the model of the jar and cap now shown you, marked "Defendant's Exhibit 2, J. G., jr."

100 A. I decline to answer the question.

79. Q. Did you not have that model of jar and cap, Exhibit 2, J. G., jr., exr., which is here put in evidence, made by a man of the name of Charles Frampton, or Charles G. Frampton?

A. I decline to answer the question.

80. Q. Why do you decline to answer questions 78 and 79?

A. Simply because I decline; the reasons why I shall not state.

81. Q. Have you any reasons why you do so decline answering those two questions?

A. I answer the questions by the same answer as to the former question.

82. Q. Why will you not give your reasons for not answering those two questions?

A. I give the same reasons I give to the last answer.

83. Q. I ask you why you will not give your reasons for declining to answer questions 79 and 80; that is, what reason you have for not stating your reasons for so declining?

A. I shall give no further answer than I have already given to the questions.

84. Will you swear that jar and cover, ring and gasket, represented by defendants' Exhibit 3, H. B, J. G., jr., which is here put in evidence, is not in all material respects like the jar you fitted up at the Jersey City glass-house?

A. I decline to answer the question.

85. Q. Do you refuse to answer the question?

A. I decline to answer the question.

86. Q. Do you decline to state whether or not you refuse to answer question 84?

A. I decline to give any other answer than I have already given.

87. Q. Did you not show such a jar as is reprented by said Exhibit 3 jar to Mr. Fitzgerald, your then counsel?

A. I don't now recollect.

88. Q. Are you trying to recollect about it?

A. I am not.

101 89. Q. Why not?

A. I banished the whole subject-matter from my mind, and I don't want it to be brought back to my mind. I care nothing about it, and I don't want to think about it.

90. Q. Since you are sworn to tell the truth and the whole truth, and have submitted so far to the process of the court, why will you not give your mind to the subject so as to enable you to answer these questions which are within your knowledge; what reason have you for doing otherwise?

A. I have no answer to make to such a question as the gentleman asks.

91. Q. Have you not some hidden reason for thus refusing or declining to answer questions on matters within your knowledge?

A. I have no answer to make to such questions.

92. Q. Have you quarreled with the complainant or any of its officers?

A. I give the same answer as to the last question—that is, I have no reply to make to the question.

93. Q. Are you interested in the patent granted to John L. Mason for improvement in fruit-jars, dated May 10, 1870, No. 102913, on which this suit is founded, and which is here in evidence, marked "Complainants' Exhibit A?"

(Exhibit handed to the witness.)

A. I decline to state as inquiring into matters not connected with this suit.

94. Q. Did you not sell said patent, of which Exhibit A is a certified copy, to the Consolidated Fruit-Jar Co., the complainant in this suit?

A. I decline to state.

95. Q. Have you any interest whatever in said patent?

A. I decline to state.

96. Q. Is it not the fact that you are wholly disinterested as a witness in this case?

A. I decline to state.

97. Q. Will you swear that you are an interested witness on the part of or on the side of the complainant?

A. I decline to state.

102 98. Q. Did you not consult Mr. Fitzgerald after having made this improvement about a patent for the same, and did not Mr. Fitzgerald inform you that in his opinion it was a good improvement and worthy of a patent; that he had no doubt he could get a patent for it, but that if you should succeed in getting a patent you could not use it, as it would infringe other patents you then had obtained, and which you had given an exclusive license to other parties to manufacture; and did he not then advise you to not get it patented at present?

(Same objection as to question 19.)

A. I don't now recollect.

99. Q. Do you try to recollect now about it?

A. I do not.

100. Q. Don't you recollect so testifying in your deposition given in the Rowley vs. Gibney & Goble case, about three years ago?

A. I don't recollect.

101. Q. Do you now try to recollect what you then testified to?

A. I do not.

102. Q. Why do you not now try to recollect about all these matters?

A. I have tried to banish the whole thing from my mind, and I don't care to remember anything about them.

103. Q. Is it to your interest to banish this from your mind?

A. I decline to state.

104. Q. Why do you banish it from your mind?

A. It has been the source of a great deal of trouble, and I'm not going to have any more trouble about it. I have banished the whole thing from my mind.

105. Q. Did you tell any one before you came here that you would not give any testimony respecting these various matters?

A. I decline to give any information in regard to the matter.

106. Q. Did you not tell one D. Burrell that you would not give any testimony in the matters inquired of?

103 A. I told Mr. Burrell that I had forgotten all about the matter, that I did not recollect much about it, and could not testify much. That is about the substance of what I said to Mr. Burrell.

107. Q. Did you tell one Bottsford before coming here to-day that you would not give any testimony in the matters inquired of?

A. No, sir; not to my knowledge.

108. Q. Do you recollect what you did tell Mr. Bottsford?

A. I decline stating further than what I have already stated.

109. Q. Did you not tell one George Alney before coming here to-day, that you would not give any testimony respecting the matters in controversy in this suit?

A. I don't recollect of stating such a fact.

110. Q. Did you not tell one George Fisher, a stockholder in the Consolidated Fruit-Jar Co., that you would not give any testimony here?

A. Not as I recollect of. I think I did say to Mr. Fisher that I would not give any testimony unless I was subpœnaed.

111. Q. When did you say this to Mr. Fisher?

A. I don't recollect now; some time ago.

112. Q. About how long ago was it; how many days, or weeks, or months, or years?

A. I can't recollect.

113. Q. Do you not feel diposed to recollect?

A. It may be a month ago or so; I can't tell the precise time.

114. Q. Have you not told other parties lately that you would not give testimony here respecting the matters in controversy?

A. Not to my knowledge; and I wish to state here that I never told anybody that I would not testify in this case if I was subpœnaed.

115. Q. Have you not stated to parties before coming here that you would not try to recollect?

A. I don't recollect saying anything of the kind.

104 116. Q. Will you swear that you did not say anything of the kind?

A. No, sir.

117. Q. Did you not say that you would not come here to testify, even after a subpœna was served upon you for that purpose?

A. I think I did so.

118. Q. Was not a second subpœna served upon you before you came?

A. There was a second subpœna served upon me because of the first being irregular.

119. Q. In what was the first irregular?

A. I understood that the time was not extended by the court, and therefore the subpœna was irregular.

120. Q. Then you thought you would disobey the subpœna, a process

of the court, because some one told you that the time was not extended. Is this the fact?

A. I did not intend to disobey the order of the court or the order of the subpœna. My impression is that before or on the day that the first subpœna noticed the case, I was served with the second subpœna, and I answered the subpœna on the second time.

121. Q. Is it not the fact that you were subpœnaed to be present here on Monday, November 17, and you were served with the second subpœna on Tuesday afternoon, November 18, during a meeting, or about the time of a meeting, held by the directors of the Consolidated Fruit-Jar Co.?

A. I don't know for certain, but I think the statement made by counsel probably is correct.

122. Q. Who told you that the time was not extended for the taking of testimony?

A. I decline to state to the gentleman who it was.

123. Q. Why do you decline to state who it was?

A. For reasons of my own.

124. Q. Did any one connected with the court give you information on this point?

A. I decline to state, but will state that I supposed I got it from good authority.

105 125. Q. Don't you know that you did not get it from the complainant, or from the complainant's counsel, or from the office of the complainant's counsel?

A. I decline to state.

126. Q. Are you prepared to swear that you did?

A. I am not.

127. Q. Don't you know that you did not obtain it from such sources?

A. I decline to state.

128. Q. Did you not tell Mr. Fisher, a stockholder of the complainant, that you would take your dividend, which you are to get from the complainant, namely, $8,000, and use it in order to beat the complainant in this suit, or words substantially to that effect?

A. No, sir.

129. Q. Have you not stated that the complainant would get beat in this suit?

A. I have.

130. Q. Why did you say that?

A. I decline to answer the question.

131. When did you say that?

A. I decline to state.

132. Q. Why did you say that, when you do not recollect, or do not choose to try to recollect, the facts within your personal knowledge respecting the matters in controversy?

A. I decline answering the question.

133. Q. Do you not want the complainant to fail in this suit, and have you not lately expressed yourself to that effect?

A. I decline answering the question.

134. Q. And is not this the reason why you withhold facts within your knowledge respecting the matters in controversy in this suit, and will not try to recollect such matters within your personal knowledge, so that the complainant should have the benefit of them?

A. I decline to answer the question.

135. Q. Did you not keep a witness residing in Camden from testifying in this suit?

A. No, sir.

106 136. Q. Do you not know a glass-blower residing there who has knowledge of certain facts; knowing him to be a witness, persuaded him not to come and give his testimony?

A. I decline to state.

137. Q. Do you not know of a communication being sent from Camden to the complainant with reference to this witness so kept from testifying?

A. I decline to state.

Examination further adjourned to November 25, 1873, at 11 a. m.

NEW YORK, *November* 25, 1873—11 o'clock a m.

Present: Counsel as before.

Mr. A. J. Todd for complainant, Mr. W. C. Witter for defendant, and the witness for further examination.

Examination adjourned to 4.30 p. m. of same day.

JOSEPH GUTMAN, JR.,
Examiner, &c.

NEW YORK, *Monday, December 8th*, 1873—11 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel as before.

Mr. Todd for complainant; Mr. Witter for defendant.

The examination of Mr. John L. Mason continued:

138. Q. Please state if you will examine the model of jar now shown you, (Exhibit No. 2, J. G., jr.,) and, if you will, please do so?

A. I have done so, sir.

139. Q. Did you not have that model of jar and cover made?

107 A. I had a jar and cover made, as near as I can recollect, something similar to the one here shown, but whether this is the one or not I cannot state.

140. Q. Do you see any difference in the said model now shown you, Mr. Mason, and the one you say you had made, in your last answer?

A. I don't recollect now as there is or is not.

141. Q. If there were any differences, would you or not be likely to discover them?

A. Well, it has been a great while ago since I made such a model, something like the one now shown. I could not now give every feature that was in the model at that time.

142. Q. Is not your memory good?

(Objected to as a question to be determined by a comparison of facts and occasions with the intervening duration of time *intervening* between them, and as calling for the opinion of the witness, also as ambiguous, and indefinite, and irrelative.)

A. I don't consider my memory very good for the last year or two; my memory has failed me very much.

143. Q. Do you not recollect testifying respecting this model of jar and cover in the forepart of the year 1870, in the suit of Salmon B. Rowley vs. John R. Gibney and Henry M. Goble, a suit pending in the circuit court of the United States for the southern district of New York?

A. I think I remember of testifying in that suit, and I testified in regard to a model, but whether this is the identical model or not I do not know; but, so far as my memory serves me, it was a model something like the model here produced.

144. Q. Was not your memory good at the time that you so testified in that suit respecting such model?

(Objected to with the same objections as in question 142.)

A. I have no doubt that I testified in that suit as my memory
108 then served me. In regard to my memory being good then I cannot say, but I certainly testified at that time as I recollected the matter.

145. Q. Have you any doubt that your memory was good at the time that you testified respecting this model and other matters in that suit?

(Objected to with the same objections as in question 142, and objected to as calling for the doubts of the witness.)

A. As regards the matter of memory, I don't think I am a competent witness now as to whether my memory is good or bad, but I have no doubt that I testified in the matter inquired of to the best of my knowledge and belief at that time.

146. Q. Has anything impaired your memory since the time of so testifying in that suit?

(Objected to by Mr. Witter as irrelevant and improper.)

A. If trouble and annoyances is capable of affecting a man's mind, I think I could say yes.

(Answer objected as evasive.)

147. Q. Question repeated.

(Same objection.)

A. Well, I think troubles and annoyances have affected my memory very much, as I have become exceedingly nervous.

148. Q. Are you prepared to swear that any troubles or annoyances have so affected your memory that you have forgotten that you identified this model about three years ago in Mr. Rowley's suit?

(Same objection.)

A. I am not prepared to say that I did not identify a model in that suit, but whether this is the model or not I am not prepared to say.

109 149. Q. Are you prepared to swear that any troubles or annoyances have so affected your memory that you have forgotten in substance other matters that you testified to respecting this model?

(Same objection.)

A. I am not prepared to swear to such a statement.

150. Q. Now, please state who made this model for you that you so testified respecting in that suit.

A. I think it was a man named Charles Frampton.

151. Q. When did you so have Mr. Frampton to make such model for you?

A. I think it was some time in the year 1859, as near as my memory now serves me.

152. Q. Do you not now recollect the month in the year 1859 when Mr. Frampton so made this model for you?

A. I do not, sir.

153. Q. Did you not testify in that Rowley case that you completed the improvement in the month of June, 1859, and went to a man by the name of Charles Frampton, and had a wooden model made of the invention, with the exception of the thread upon the neck; that you knew it was in the fore part of the summer of 1859 when you had such model—also moulds—made, and that you fixed the time by the fact that it was a short time after you moved to Pearl street from Canal, and some months before you sold your patents to Henry Mitchell and Andrew Bennet?

(Counsel for defendant asks counsel for complainant to state his object in asking this question.

Counsel for complainant having requested the question to be pr[illegible]

thus declining to accede to the request of counsel for defendant, the question is objected to for the reason that it is not permissable for counsel to ask his own witness questions which would impeach or tend to impeach the witness or his credibility.

110 The question is further objected to for the reason that the counsel for complainant appears to be reading from some printed pamphlet, of which neither the court nor defendant's counsel has any legal knowledge.

The question is further objected to for the reason that it is not proper for counsel to test the recollection of his own witness in such way.)

A. I don't now recollect what I testified to at the time stated by counsel, but I do recollect that I did make a model some time in 1859, and I recollect Mr. Charles Frampton made the model, but the further particulars regarding it I don't now recollect, but I think it was some time in the summer or fall of 1859.

154. Q. Please state why you think it was some time in the fall or summer of 1859 when this model was so made by Mr. Frampton.

A. I can't now recollect anything why I state that it was in the summer of 1859, further than that I have an idea that it was in that year, further than I think that I testified to that fact in a former suit; I think that it was the fact that it was in that year.

155. Q. But you have some reason, have you not, for fixing it as being in the fall or summer of 1859? and, if so, please state it.

A. I have no reason further than that I have already stated.

156. Q. Did you not commence move to Pearl street from Canal in April, 1859?

A. I recollect we moved from Canal street to Pearl street, but the precise time I am not certain of; I do not now recollect, but my impressions are it was in 1859, in the spring.

157. Q. When did you sell out the patents obtained by you, previous to 1859, to Henry Mitchell and Andrew Bennett?

A. I think it was in the latter part of 1859.

158. Q. Is it not the fact that you were in Pearl street when you
111 so caused Charles Frampton to make this model, and was it not before you had so sold your patents that it was so made?

A. I think it is likely that it was, but I have no distinct recollection of it now.

159. Q. Please describe this model that Mr. Frampton so made for you.

A. The model that is here on the desk (Exhibit No. 2, J. G., jr.) looks like the model, as near as I can now recollect.

160. Q. When did you devise and make the improvement shown by this model now before you; that is, how long before the model was made was it?

A. I don't recollect; but, so near as I can now recollect, it was about the time that the model was made.

161. Q. Please state what improvement in fruit-jars this model was intended to show.

A. It was intended to show a jar with a glass cover, with a screw-ring attached to a glass jar.

162. Q. State where the glass cover rested on the jar, having reference to the mouth of the jar.

A. As far as my memory now serves me, it was on the mouth of the jar, or just below the mouth of the jar.

163. Q. Where did the edge of the cover rest, having reference to the mouth of the jar, inside or outside of the jar?

A. I am under the impression that it was on the outside of the jar.

164. Q. You say there was a screw-ring; how did it engage with the jar and the cover?

A. By a screw on the neck of the jar.

165. Q. Where did the edge of the cover rest, and with reference to the screw-thread on the neck of the jar?

A. Above the glass thread on the neck of the jar.

166. Q. Did the screw-ring operate on the glass cover? If so, how?

A. It did operate on the glass cover by an inward flange, and when the screw was turned it brought the cover down upon the gaskets upon the neck of the jar.

167. Q. When you speak of the gasket being upon the neck of
112 the jar, do you mean to say it was upon the extreme top edge of the mouth of the jar, or what do you mean?

A. My impression is that it was upon a shoulder a little below the mouth of the jar.

168. Q. Did you have a mould made of the glass jar and covers represented by this model; if so, how soon after the making of the model were these moulds made?

A. As my recollection of the matter now is, I had a mould made, but I can't recollect now as to whether it was a short time or a longer time after the making of the models.

169. Q. What is your best recollection as to how long it was after that you had the moulds made for the jar and cover?

A. It may have been from one to three months.

170. Q. Who made these moulds for you?

A. A man by the name of Brooke, either William or Homer Brooke.

171. Q. Where was his place of business at that time?

A. It was in Centre, corner of White street, I think, in New York.

172. Q. What did you take to Mr. Brooke at the time you so went to him to have these moulds made?

A. I don't recollect whether I took anything or not, but I think I may have taken a model; but it has been so long now that I am not distinct in regard to that.

173. Q. Do you not recollect, in addition to taking a model, taking to him a screw-ring, to give him an idea of how you wanted the screw-thread made in the mould for the jar?

A. I don't recollect anything about the screw-ring at the present time, but I had a screw-thread cut upon the mould.

174. Q. What was done with these moulds for a glass jar and glass cover, after they were made by Mr. Brooke?

A. They were taken to the Jersey City glass-house.

175. Q. Please state what was done with them there.

A. There were glass jars made from them there.

176. Q. Please state who had charge of the making of those glass jars at the Jersey City Glass-Works?

113 A. Well, I think that I have met two or three different parties, perhaps four or five different parties, while I was having glass jars made there; sometimes I would meet a Mr. Dummer, sometimes Mr. Reed—Mr. Horatio Reed—and sometimes I would meet somebody else that would be there in the office; but I think Mr. Horatio Reed had the principal charge of the factory.

177. Q. Please state what was done with those glass jars and glass covers, after they were so made at the Jersey City Glass-Works

A. Well, they were taken away, I think, and used by myself.

178. Q. What, if any, use did you make of them, or what did you do with them?

A. The first day that I took some away I really don't remember, but I think that I gave one to my lawyer, W. P. N. Fitzgerald, and I think I took the rest home of the first lot.

179. Q. What *do* you give one to your lawyer, Mr. Fitzgerald, for?

A. I am not prepared, hardly, to say what for, but my impression now is, to show him the jar, and to see if I could get a patent on it, I think.

180. Q. Please state what became of the other jars which you say you so took away, at the time you gave this one to Mr. Fitzgerald?

A. I don't recollect.

181. Q. When did you take away any more that you recollect of?

A. Well, I think that I took away another lot after that time.

182. Q. Are you so positive of this latter fact that you would swear to it?

A. I am under the impression that I got a second lot, after the first three or four, or half-dozen.

183. Q. Please state what you did with them.

A. I think I sold them.

184. Q. How many were in this second lot?

A. A few dozen of them; I can't state now how many; not a great many of them.

114 185. Q. How long after this first lot was it that you took away this second lot?

A. I don't recollect; a short time, I think.

186. Q. To whom did you sell these?

A. I can't now recollect.

187. What caused you to sell a few jars, in the manner in which you did, on this occasion?

A. I don't recollect, except it was to have them tried.

188. Q. Have you any of the glass jars and covers which were so blown and pressed at that time?

A. I have not, sir.

189. Q. When was it that those jars and covers were so blown and pressed in those moulds, as you have stated?

A. In 1859, I think.

190. Q. What became of the moulds of that gass jar and glass cover?

A. I don't know, sir.

191. Q. Did you ever hear?

(Objected to by Mr. Witter as hearsay.)

A. Mr. Horatio Reed informed me, who had charge of the glass-house, where they were; that they were sold to a foundry-man and melted up.

192. Q. What became of that glass jar and glass cover which, as you testify, was left with your lawyer, W. P. N. Fitzgerald?

A. I don't know, sir.

193. Q. Did you ever look it up or inquire for it?

A. I did inquire for it, but nobody knew anything about it.

194. Q. Please state when you inquired for it, and of whom?

A. I think I inquired of Mrs. Fitzgerald; I think some time in 1868.

195. Q. How long was it before you made your application for your patent on this jar that you inquired of Mrs. Fitzgerald for the jar and cover that you had left with her husband?

A. I never inquired for it before I made the application.

115 196. Q. Were those jars fitted up, before you took them from the Jersey City Glass-Works, with flanged screw-rings and gaskets, including the one that you took to Mr. Fitzgerald?

A. As my memory now serves me, I think there were two or three of them so fitted up, but I am not, at the present time, clear upon that subject.

197. Q. Was the one that you took to Mr. Fitzgerald so fitted up?

A. My impression is that it was.

198. Q. State how, if at all, the jar that is now shown you (marked "Complainant's Exhibit 3, J. G., jr.) compares or differs from those jars and covers which were then so blown, pressed, and fitted up, including the one which you say you gave to Mr. Fitzgerald.

A. It has the resemblance of that jar, as far as I recollect, but it has been about fourteen years ago, and my memory is not so distinct in regard to it.

199. Q. You say that you took the jar to Mr. Fitzgerald to see if you could get a patent on it. What did Mr. Fitzgerald tell you?

(Objected to by Mr. Witter, as calling for hearsay evidence.)

A. I don't recollect at the present time.

200. Q. How soon after that jar was blown, and cover pressed and fitted, did you take it to Mr. Fitzgerald?

A. I don't recollect, but I presume it was but a short time.

201. Q. Did not Mr. Fitzgerald inform you when you so took the jar to him that, in his opinion, it was a good improvement and worthy of a patent; that he had no doubt he could get you a patent for it, but if you should succeed in getting a patent for it, you could not use it, as it would infringe other patents which you then had obtained, and which you had given exclusive license to manufacture under to other parties, and advised you not to get it patented at that time?

(Objected to by Mr. Witter as leading, and as an improper way
116 of putting evidence in the mouth of the witness; also objected to as calling for hearsay evidence and as irrelevant.)

A. I have no doubt that Mr. Fitzgerald and I had some conversation in regard to it, but what that conversation was, at the present time I have no recollection.

202. Q. Was not that the nature of the conversation?

(Same objections as to question 201, and further objected to as indefinite.)

A. I cannot now recollect.

203. Q. Had you not, at the time that you gave this jar to Mr. Fitzgerald, parted with the exclusive right to manufacture under your previous patents?

(Objected to by Mr. Witter as irrelevant and immaterial.)

A. Yes, sir; I think I had.

204. Q. Was not Mr. Fitzgerald pleased with this improvement over your previous patents?

(Objected to as immaterial by Mr. Witter.)

A. I really don't know how Mr. Fitzgerald expressed himself at the time.

205. Q. Did not he, in that conversation, have reference to your previous patent?

(Objected to by Mr. Witter as calling for hearsay evidence and as irrelevant.)

A. It is possible that he had, but it is so long ago that I do not now recollect.

206. Q. Now, tell me if you do not now recollect why you did not then patent that jar?

A. I don't know.

207. Q. Was there not some reason why you did not then patent it?
A. I don't recollect.
208. Q. Don't you believe there was, from the fact of your not having then patented it?
117 (Objected to by Mr. Witter as immaterial and irrelevant.)
A. I presume there was some reason, but I do not now recollect it.
209. Q. Was it not mainly on account of the advice your counsel, Mr. Fitzgerald, then gave you that you did not get it patented?
(Objected to by Mr. Witter as leading, and because the witness has said he did not recollect either any reason or the particulars of Mr. Fitzgerald's conversation.)
A. I don't now recollect anything of subject-matter of the conversation of this matter.
210. Q. I don't ask you as to your recollection as to the subject-matter of the conversation, but whether you did not get it patented because of a conversation which you then had with Mr. Fitzgerald?
(Same objection as that made to the previous question.)
A. I don't now recollect.
211. Q. Did you not have more than one conversation with Mr. Fitzgerald on the subject?
A. It is possible that I had, but I don't recollect.
212. Q. You went to him to have him get a patent on it for you, did you not?
A. I went to him to talk on that subject, and I presume I did.
213. Q. And he did not get a patent for you, or even make an application for you on it; is not this so?
A. That is the fact, sir.
214. Q. You stated you had given an exclusive license to work under your patents granted prior to 1859; did you not sell all of said patents after the granting of said patent, and during its existence?
(Objected to by Mr. Witter as immaterial.)
118 A. My recollection in regard to the matter is that the patents were all sold while a license was in force, with the consent of all the parties interested in the license.
Adjourned until 11 o'clock a. m. December 9th, 1873.

NEW YORK, *Tuesday, December 9th*, 1873—11 o'clock a. m.

Met pursuant to adjournment.
Counsel present as before.

215. Q. To whom did you sell your patents, and what did you get for them as a consideration?
A. I object to answering that question, upon the ground that those patents are not the patents now in litigation, and has nothing to do with the case now before the court, and inquiring into my private matters that took place at that time.
216. Q. Is it not true that you sold those patents to Henry Mitchell and Andrew Bennet for the sum of thirty thousand dollars, receiving two thousand dollars in cash and twenty-eight thousand dollars in notes during the existence of that exclusive license, as you have stated, and that you passed away some of those notes, together with the mortgage given on the patents to secure the payment of said notes.
A. I object to answering the question, because I believe it has nothing to do with the case before the court, as those patents sold at that time, stated by counsel, are different to the patent now in litigation.

217. Q. Question repeated, and witness asked to give a responsive answer.

A. I think that is the fact, but I think the counsel is outraging my feelings and my private affairs in asking questions which don't belong to the case.

218. Q. Now, is it not the fact that said notes and said mortgage on the patents assigned to secure the payment of the whole of the
119 notes, or any one of them, fell into the hands of Louis R. Boyd, or the Sheet-Metal Screw Company, who foreclosed said mortgage, and thereby secured your equity in those patents referred to?

A. I have most forgotten, but I think that is about the way it was.

219. Q. Did you ever get back the title to those patents, Mr. Mason, prior to the 15th day of January, 1868?

A. No, sir.

220. Q. After you had called on Mr. Fitzgerald in the year 1859, did you not again call on him with reference to the taking out of a patent on the jar which you so left with him in the year 1859?

A. I don't now recollect anything about that matter; it may be that I did.

221. Q. Did you not state in the giving of your testimony in the Rowley suit, in the year 1870, that you did so call on Mr. Fitzgerald in the *the* year 1866?

(Objections to 153d question repeated.)

A. I don't recollect now what I did testify to at that time.

222. Q. Why cannot you recollect now, as well as you can at any other time, what you testified to in the year 1870 respecting the matter inquired of in the last question?

A. I can't answer the question any better; I can't tell the reason why; I can't remember the matter; that is all I can say.

223. Q. Do you mean to testify that you have lost all recollection respecting what you testified to in the Rowley suit in the year 1870 about the matter inquired of in the 221st question?

(Same objections as to 153d question, and also objected to as assuming what is not proved.)

A. I can't say that I have lost all recollection, but I don't recollect whether I called on Mr. Fitzgerald, after leaving the model with him, about getting a patent. I have no doubt at the time I left the
120 model with him I did talk with him about getting a patent, and it is possible that I did at some future time, but at what time I am not prepared to say.

224. Q. How often, after so leaving such improved jar with your counsel, Mr. Fitzgerald, did you call upon him about getting a patent for it?

A. I couldn't tell whether it was more than once or twice.

225. Q. Do you not recollect of testifying in the Rowley suit, in 1870, on being asked if you had any subsequent conversations with Mr. Fitzgerald after so leaving the jar with him, that you had conversation with Mr. Fitzgerald at subsequent times, and his advice to you was that you could not work the improvement if you should get a patent on it, and that he told you to wait for some future day when you might possibly make some good use of it?

A. I have no distinct recollection of the conversation referred to by the counsel, but I have a very faint recollection of something of that character taking place between Mr. Fitzgerald and myself.

226. Q. Will you swear that you did not so testify in the Rowley suit in the year 1870?

(Same objection as made to question 153.)

A. I will not; for I have no recollection as to what I testified to.

227. Q. Why have you no recollection of what you testified to then?

A. Simply because I have not. I cannot say why; simply that I have no recollection of the matter inquired of.

228. Q. Can you give no reason why you have no recollection of what you testified to respecting the matter inquired of in that Rowley suit?

A. I cannot.

229. Q. Why can you not?

A. Simply because I can't.

230. Q. If you cannot give any reason why, do you not think if you would make an effort with your memory that you could recollect about it; and will you swear that with such an effort you cannot recollect about it?

121 A. I can recollect nothing more about the matter than I have already stated, that I have a faint recollection of something of the kind inquired of passing up between Mr. Fitzgerald and myself; but I repeat that I have no very distinct recollection of the matter.

231. Q. Have you made an effort, and a strong and earnest one, to recollect about this matter, or to recollect what you testified in the Rowley suit respecting it?

A. I am trying to recollect the best I can, from memory, what took place at that time. I am answering the gentleman's questions as my memory now serves me.

232. Q. Are you willing to testify that your memory is poorer now, Mr. Mason, than it was in 1870?

A. I don't know, sir, whether it is or not.

233. Q. Are you willing to swear, sir, that you don't know whether it is or not?

A. I am not willing to swear anything about it. I don't know, and therefore I can't tell.

234. Q. Do you mean to swear that you don't know whether it is poorer or not than it was in the year 1870, when you cannot now recollect what you testified to in the Rowley suit, in the year 1870, respecting the matter inquired of?

(Objected to by Mr. Witter as assumptive.)

A. I think my memory is poorer, but I don't think I am capable of judging in that matter, as I have already stated.

235. Q. If you think your memory is poorer, as you say in your last answer, why do you swear in your 232d answer that you do not know whether it is or not?

A. I merely give an opinion, without knowing the fact, and I can answer no further upon those questions.

236. Q. If, as you state in your answer to 226' question, *that* you have no recollection as to what you testified to in the Rowley suit respecting the subsequent Fitzgerald interview, do you not know that your memory must be poorer now than it was in 1870; or else that it is that you will not now try to recollect what you testified to in that matter in the Rowley suit; and which is it?

122 A. I have no disposition not to recollect. I will give the gentleman answers to every question he may put to me, and am well disposed to do so, and will do so in accordance with what I now recollect to be the facts. In regard to my memory, I hardly think it is as good as it was two years ago; still, this is merely a matter of opinion of my own.

237. Q. Have you had any sickness since the year 1870 which has caused your memory to be impaired?

A. I don't know as I have; but I know I have lately become exceedingly nervous within the last year; am subject to very nervous headaches—severe nervous headaches.

238. Q. Have you been under the advice or care of any physician during the past three years?

A. I have not, sir; I have always doctored myself.

239. Q. Have you been confined to the house by reason of this nervousness or these headaches?

A. No, sir; no more than perhaps a half day at a time, or something of that kind.

240. Q. Are you not of a robust constitution and free from ordinary bodily ailments?

A. I believe I am, except the inflam'itory and chronic rheumatism, which troubles me sometimes.

241. Q. Does this inflam'itory or chronic rheumatism affect your recollection of past events?

A. I don't know as it does.

242. Q. Are you prepared to swear that the fact of your having become exceedingly nervous of late, and having nervous headaches, has affected your recollection of past events?

A. Well, I don't know as it has, and I don't know but what it has. I hardly know how to answer the question.

243. Q. Then tell us, as near as you can swear, after reflection, what you recollect of the subject of the conversation had with Mr. Fitzgerald respecting your not taking out a patent for the present improvement, after you so left with him the jar, in the year 1859, as you state?

123 A. As near as I recollect the matter, I took the jar to Mr. Fitzgerald for the purpose of showing it to him, and it may be for the purpose of talking with him in regard to taking out of a patent; but what that conversation was I have no recollection.

244. Q. Why do you say it may have been for the purpose of talking with him in regard to taking out of a patent, if it was not in fact so; what makes you have that impression? Upon what is your judgment founded in making that statement?

A. Because I have a faint impression that I had such a conversation with him. I don't recollect now. I can't say upon what I base my opinion, except upon my recollection.

245. Q. Then you recollect the fact of subsequently going to him in reference to the taking out of a patent for this improvement, do you?

(Objected to by Mr. Witter, as assuming facts not shown to be such.)

A. I wouldn't say, positively, that I did go to him expressly for the purpose of getting out a patent, but I did take the jar to him, and talked over matters with him, and, as I have already stated, I may have talked to him about taking out a patent, but what the conversation was I do not now recollect.

246. Q. I am referring to subsequent interviews. Please confine your answers to those?

(Same objection by Mr. Witter as to last question.)

A. I think I do recollect of seeing Mr. Fitzgerald about this jar some years after I left the first one with him, and it may have been that I consulted with him about another matter. What the conversation was I don't recollect. The other matter was, I think, a patent garbage-box.

247. Q. Now, how many years after you so left this jar with Mr. Fitzgerald did you again consult him about it?

A. I think it was a number of years, probably eight or nine years.

124 It was about the time that he drew a specification for me for a garbage box which I received a patent for.

248. Q. Do you know about the time or the year that he drew this specification for a garbage-box?

A. I think it was in 1867 or 1868.

249. Q. Now, are you prepared to swear that you did not consult Mr. Fitzgerald about the taking out of a patent for this last improvement in fruit-jars between the time you so left the jar with him, in 1859, and the time you so went to him, in 1867 or 1868, for the garbage-box specification?

A. I am not prepared to swear that I did not.

250. Q. Are you prepared to swear that you did not consult him frequently, in that interval, about the taking out of a patent for the said improved fruit-jar?

A. I am not prepared to swear that I did not consult him on that matter, because I have some idea that I did.

251. Q. Please hear read again the 250th question, and then answer it.

A. As near as my recollection now serves me, I don't think I saw Mr. Fitzgerald more than three or four times; and whether I consulted him each time I have no recollection, but I think some of the times I did talk about the subject of fruit-jars.

252. Q. Please hear read again the 250th question, which is a simple one, and then give your answer to it responsively.

A. I can answer the question in no better way than to state the fact that I had interviews with Mr. Fitzgerald upon the subject of getting me out the patent on a garbage-box, and I have no doubt that I did talk about the jar, and probably consulted him in regard to getting out a patent for it, and it may be I had several interviews of this kind.

253. Q. Now, state in your own language about the substance of what Mr. Fitzgerald, in those several interviews, advised you about the matter of your getting out or not getting out a patent for this improved fruit-jar.

A. My impression is that he advised me to get out a patent, but what the conversation was, fully, I don't recollect.

125 254. Q. But you mean to swear that he did advise you to get out a patent during that interval, do you?

A. That is my impression now in the matter.

255. Q. Question repeated.

A. I mean to swear that my impression is now that he did.

256. Q. Do you mean to swear that you don't now know that he did so advise you, or not, during that interval?

A. I mean to swear that my impression is that he did advise me to take out a patent.

257. Q. Will you answer the 256th question responsively, which is here repeated for that purpose?

A. I don't mean to say that I don't know, because I say, to the best of my recollection, that he did so advise me to take out a patent.

258. Q. Don't know what?

(Objected to by Mr. Witter as ambiguous, as it seems to him to be a singular question to ask *to* witness what he don't know.)

A. I would answer the question in any other shape if I saw how to do it. I have answered it correctly as I understand it.

259. Q. Do you mean to swear that you don't know that he did or did not so advise you? That is what I mean. Will you now answer the question?

A. I will not swear that he did not so advise me.

260. Q. Then, will you swear that he did so advise you?

A. Yes, sir; to the best of my recollection and belief.

261. Q. Does your recollection and belief enable you to swear that he did so advise you to take out a patent during that interval, and before you went to him about the garbage-box specification?

A. I think the interviews in regard to the garbage-box was at the same time as in regard to the fruit-jar.

262. Q. Does your recollection and belief enable you to swear that Mr. Fitzgerald did advise you to take out a patent on this improvement in fruit-jars, between the years 1859 and 1867?

126 A. I will say that he did not, between the years 1860 and 1866, because during those years I don't think I saw him. If I did I don't now recollect, but in 1867 or 1868 was the time that I took out the patent for the garbage-box, and was the time that I had the interviews with Mr. Fitzgerald in regard to the jar, and, as my recollection now serves me, advised me to take out a patent.

263. Q. Why did you not see Mr. Fitzgerald between the years 1860 and 1866, or why do you think you did not see him between those years?

A. I think Mr. Fitzgerald left his office in the year 1860 or the fore part of 1861. My impression is that he was in the Army.

264. Q. Before he went into the Army did you not have an interview or interviews with him, in which the question came up as to whether you ought to or ought not to patent this fruit-jar? and, if so, give in your own language the substance of the advice that he then gave you respecting your patenting or not patenting this fruit-jar in question.

A. I think we had conversations upon that subject, but what that conversation was I don't recollect; but my impression now is that it was rather discouraging on getting a patent.

265. Q. On what ground was it discouraging towards getting a patent?

A. My impression is on account of other patents which I had already obtained.

266. Q. You say Mr. Fitzgerald advised you, in 1867 or 1868, to take out a patent. State why he had changed his views from what they were before they went to the war, as you state.

A. I don't know what made him change his views, if he did change them.

266½. Q. Are you prepared to swear that he did not change them?

A. No, sir; I am not.

267. Q. What reason or cause have you to believe that he did change them, and advise you to take out a patent, after having previously advised you not to take out one?

127 A. I have already stated, as far as my recollection of the matter is, that, in 1859, my impression is that he talked discouragingly of getting out a patent; then, in 1867 or 1868, he advised me to get out a patent, so I supposed he had changed his mind. What caused him to change his mind I do not know.

268. Q. Was it not what you told him that caused his views to change respecting your taking out a patent for this improved jar?

A. I don't recollect; but I know the fact that Mr. Fitzgerald took out all my patents, and was conversant with all my patent matters better than I was myself.

269. Q. Are you prepared to swear that it was not what you told Mr. Fitzgerald, in the year 1867, that caused him to change his mind and advise you to take out a patent for this improved jar without further delay?

A. I am not prepared to swear that it was not.

270. Q. Did you not, just previous to your going to Mr. Fitzgerald, in 1867, about the taking out of a patent for this improved jar, learn that a jar had made its appearance in market substantially the same as your said jar, except that it had a tin instead of a glass cover, over the flange of which tin cover the flange of the screw-ring engaged to hold such cover down over the mouth of the jar?

A. I did see such a jar some time previous to my talking with Mr. Fitzgerald

271. Q. Now, was not your communicating to him this fact the reason, in your opinion, of his advising you as he did about your proceeding to patent your 1859 jar-improvement?

A. My impression is that I did state to him that there was jars in the market like the jar I showed him in 1859, and he advised me, if I could, to get a patent. That is my impression about it now.

272. Q. You say, in your 268th answer, that Mr. Fitzgerald took out all your patents. State the reason why, after his having so advised you to patent this 1859 jar, he did not proceed at once and obtain a patent on it for you.

128 A. Well, I don't now recollect. I suppose because I didn't order him to do so. I suppose there was reasons at the time, but I don't recollect them now in particular.

273. Q. Will you swear that you did not order him at that time to proceed and take out the patent for this improvement as soon as his engagements or time would permit him to do so?

A. I cannot swear to that statement; but I presume that I gave no order, from the simple fact that it was not done.

274. Q. I do not ask you to swear to that statement, but whether you will swear now that you did not order him or request him to proceed and obtain a patent for you as soon as he could conveniently.

A. I cannot swear to anything in the matter, definite, for I do not recollect.

275. Q. After he so advised you to get it patented, and in view of your admission that Mr. Fitzgerald took out all your patents, are you prepared to swear now that you did not request him to obtain a patent for you, if he could?

A. I am not prepared to swear that I gave such an order.

276. Q. Are you prepared to swear that you did not give such an order?

A. I am not; but my impression is that I did not, from the fact that such an application was not made.

(All after "I am not" objected to as not responsive by complainant's counsel.)

277. Q. Had you any reason or cause for not proceeding to obtain a patent on the improved jar of 1859, after Mr. Fitzgerald so unqualifiedly advised you to patent it? If so, state such reason or cause.

A. Well, I don't know as I had any reason or cause for not doing so.

278. Q. Then, it was not because of your fault or neglect that Mr. Fitzgerald did not proceed to try to obtain a patent for you on that jar, was it?

129 A. I suppose it was all my fault. Had I given him the order to draw the specifications and paid the fees, I have no doubt the application would have been made.

279. Q. Since you testify that you don't know that you had any reason or cause for not proceeding to obtain a patent after such advice received from Mr. Fitzgerald, are you prepared to swear that there was any reason

why you did not then request him to proceed to take out such patent, and to pay him the fees required for the purpose?

A. I don't now recollect that there was any reason further than that I was not ready just at that time.

280. Q. State why you were not ready just at that time to proceed to obtain your patent, after having been so advised; and do you swear that you were not ready for such reason?

A. Mr. Fitzgerald, when he advised me to obtain that patent—we were talking also about getting a garbage-box patented; I went on and got him to draw a specification, and paid the fees for this garbage-box patent; and I thought after I got the patent on that I would get the patent on this jar, if I could. That is the only reason that I now recollect for not proceeding about this fruit-jar.

281. Q. Are you prepared to swear that that was the only reason why you did not request Mr. Fitzgerald to proceed and obtain a patent for you at that time for this improved fruit-jar of 1859?

A. I think that that was the only reason at that time.

282. Q. How soon did you request Mr. Fitzgerald to proceed to obtain a patent for this fruit-jar of 1859?

A. I never requested him, as I recollect of.

283. Q. Will you swear that you did not request him to obtain a patent for you on this improved jar of 1859?

A. I don't recollect of so doing at the present time.

284. Q. Question repeated.

A. I couldn't swear I did not. I talked to him on the matter of obtaining a patent on this fruit-jar.

Adjourned until 11 o'clock a. m. Wednesday, December 10th, 1873.

130 NEW YORK, *Wednesday, November* 10, 1873—11 o'clock a. m.

Met pursuant to adjournment.

Counsel as before.

285. Q. Do you mean that you again talked to him on the matter of obtaining a patent on this first jar at the time that you had interviews with him about getting out a patent for the garbage-box?

A. Yes, sir.

286. Q. Is it not true that one of the causes of your waiting until you did actually make application for this improved fruit-jar in question was you expecting Mr. Fitzgerald to make the application for you?

A. I think it was, sir.

287. Q. Was there any trouble with Mr. Fitzgerald that caused him to delay in making application for you?

A. I can't say as there was, particularly, at the times that I talked with him, because he would have got out a patent for the jar instead of the patent for the garbage-box, if I so wished, at the time; but some time after, when I made up my mind to get out a patent, I waited for Mr. Fitzgerald, thinking that he would be the proper man, and, on inquiry, I found that he had died in the mean time; and I then went to another lawyer, a Messrs. Van Santvoord and Hauff, and they made an application for this patent.

288. Q. How soon after first seeing Mr. Fitzgerald, in 1867, about taking out a patent for you on this improved jar, did you make up your mind to have it taken out?

A. I think I talked with Mr. Fitzgerald on two occasions, and probably three; and I think it was on the second, probably on the second or third interview—it may be the first—that I had with Mr. Fitzgerald; as near

as my memory now serves, the garbage box and fruit-jar were talked over at the same time. I made up my mind to make an applica-
131 tion for a patent after I made my application for a patent for the garbage-box, as near as I can now state.

289. Q. Please state why you did not make up your mind sooner, especially in view of your having seen a similar jar with a tin cover in market.

A. I don't know as I can state, hardly, why I did not, excepting that I didn't care about doing it at that time.

290. Q. What was this interval of time in which you did not make up your mind to make the application?

A. Well, I think it might have been a month, or two or three months from the time I first saw Mr. Fitzgerald before I made up my mind to take out a patent, as near as I can recollect.

291. Q. How soon, after you made up your mind to take out a patent did you see Mr. Fitzgerald?

A. When I got ready to take out the patent I did not see Mr. Fitzgerald, as he had died in the mean time, from the time that I talked about the getting out of the patent to the time that I got ready to take it out.

292. Q. Had not your circumstances somewhat to do with the delay in the getting out of your patent?

A. Well, I suppose it had for some space of the time; some considerable space of the time, from 1860 to 1865; I wish to rectify—instead of 1860 I wish to say 1861.

293. Q. Were not your circumstances or your means very limited in 1867?

A. My circumstances were limited in 1867.

294. Q. Do you recollect the time when you made your application for a patent for this improved jar?

A. I don't recollect exactly, but I am under the impression that it was in 1867 or the fore part of 1868.

295. Q. How soon after you made the application for the patent did you commence to put them in market?

A. From six to eight months, I think.

296. Q. Under what name and title did you manufacture such jars and put them in the market?

A. Mason's improved.

297. Q. Did not Mr. Fitzgerald promise to make the application on this improved jar for you in the year 1867, and did you not rely
132 on that promise, and wait months, expecting to see or hear from him, when you heard that he was dead; that he had died in Washington, and that you then went to Messrs. Van Santvoord and Hauff to have them make your application?

A. Mr. Fitzgerald did promise to take out that patent when I would get ready, and I did wait some time to see him, and heard that he had died in Washington.

298. Q. What was Mr. Fitzgerald's condition of health in the year 1867, and had he been sick?

A. His health was not very good; very poor.

299. Q. Did the Sheet-Metal Screw Company, of whom Lewis R. Boyd was a member, continue all of this time to manufacture fruit jars and covers under the patents granted to you previous to the year 1859—that is, such jars as represented in the defendant's Exhibit No. 24, J. G., jr. exhibited in the Rowley case?

A. They did.

300. Q. Please look at the jar now shown you, marked "Complainant's Exhibit Mason's Improved," and state if that is like the jar you commenced to manufacture and s ll after you so filed your application for the same through Messrs. Van Santvoord and Hauff.

A. Yes, sir; that is substantially the same.

301. Q. Who manufactured and sold these jars for you; yourself or a company? If so, state the fact.

A. It was a company known as the Mason Manufacturing Company.

302. Q. Previous to your obtaining a patent, prior to 1859, on the jar like defendant's exhibit No. 24, what forms of glass-threaded jars did you devise? State the first one and the size of it.

A. It was a half-gallon jar, with a glass thread around the neck.

303. Q. Please look at the half-gallon jar marked "Defendant's Exhibit No. 25, J. G., jr.," in the Rowley case, and here referred to in evidence, and state if that is one of the jars that you first made.

A. That is one of the jars.

304. Q. State what kind of a cover and fastenings such jars had.

133 A. They had a solid cover; a cover like defendant's exhibit No. 24, J. G., jr., in the Rowley case.

305. Q. State whether you had any open screw-rings, with a flange and cover in connection therewith, for any of these jars made prior to your making such a jar as defendant's exhibit No. 24.

A. I made a cover for this jar with a screw-ring as now on it, a cover that fitted inside of the mouth of the jar.

306. Q. Prior to the obtaining of your patent on defendant's exhibit No. 24 jar, in the year 1858, and after making such half-gallon jar and screw-ring and cover, what form of screw-neck jar did you next make, if any?

A. I made a screw-necked jar whose screw-neck vanished before reaching the shoulder and before reaching the top.

307. Q. Did you make these changes all at once, or at different times?

A. I think I made them all about the same time.

308. Q. State who made the open screw-rings, that you had made like defendant's exhibit No. 25, before you concluded on and made the changes last referred to by you?

A. I am not certain whether it was Charles Frampton who made it or whether I made it myself. I have forgotten in regard to that matter.

309. Q. Just before you made the changes of making a glass screw-thread vanish before it reached the neck, please state if you did not first cause it to vanish before it reached the shoulder of the jar, as shown by defendant's exhibit No. 1, J. G., jr., ex'r. (Exhibited in the Rowley case.)

A. Yes, sir; I did.

310. Q. What did you do with these half-gallon jars and flanged screw-rings and covers which you made prior to the taking out of your patent of 1858 on the glass threaded jar, like defendant's exhibit No. 24, J. G., jr., ex'r., exhibit in the Rowley case, and were there many of them?

A. I never done anything with them, and I never made but one cover and one ring prior to 1858.

134 311. Q. By whom were the jars and caps first commenced to be sold prior to 1858, which are represented by defendant's exhibit No. 24, J. G., jr., ex'r?

A. I think I commenced selling them myself.

312. Q. To whom did you grant the exclusive license, under your patents, for the manufacture of these jars?

A. To Paine, Frasier and Mason and I am not sure but Henry Mitch

ell, but I am not certain; I know Henry Mitchell was a partner in the concern.

313. Q. When, previous to the year 1859, was this exclusive license granted?

A. I am not sure, but my impression is that it was some time in the latter part of 1858 or the fore part of 1859.

314. Q. Did Paine & Co. manufacture and sell these jars under your said patent?

A. They did.

315. Q. Please look at the jar now shown you, called the Hero, and containing a tin top, and marked "Complainant's exhibit O, J. G., jr., ex'r," in the Rowley case, and which is now here referred to and put in evidence, and state if that resembles the jar which you saw in the market just previous to your going to Mr. Fitzgerald, as you state, about taking out a patent for the improved jar in question.

(Objected to, assuming what is not proven.)

A. I saw a jar like this some time prior to my making the application for a patent, and I think some time before Mr. Fitzgerald and I talked about getting a patent on the jar now in question.

316. Q. Who was making this Hero jar at such time and putting it into the market?

A. Well, I don't know of my own knowledge, but I understood it was Mr. S. B. Rowley, of Philadelphia.

317. Q. Was he introducing it, or was it already introduced? State how this was.

A. I think it was already introduced, because I saw them on sale in the stores.

135 318. Q. Was this the first knowledge you had of it, that is to say, of the jar being on sale in the stores?

A. Well, of this tin-top jar I think it was.

319. Q. Did this jar become known as the Hero jar?

A. I believe it did, sir.

320. Q. Did you not manufacture glass jars in the year 1869 for Payne & Co.?

A. I think I did, in the fall and winter of 1859 and 1860.

321. Q. Did they not furnish you with means for that purpose?

A. They did to a certain extent; they agreed to furnish the entire means, but they didn't do it; that is, as I understood the arrangement.

322. Q. When you went out of that glass business, is it not true that you had no means, and was involved in debt financially, and was unable to pay your debts?

A. Yes, sir; that is in 1861, after the crisis brought on by the commencement of the war.

323. Q. Have you now any doubt, Mr. Mason, about the model exhibit No. 2, J. G., jr., ex'r, (exhibited in the Rowley case,) being made in the year 1859, by Mr. Frampton, for you, of the fruit-jar and cover; and do you recollect such model being introduced in evidence in the Rowley vs. Gibney and Goble case?

A. I recollect a model being introduced in the Rowley vs. Gibney and Goble case. This model in its general appearance, as far as my memory serves me, resembles the model put in in that case. From its general appearance I should say it is the same model.

324. Q. Besides the jar which you tried to recover, which was left with Mr. Fitzgerald, did you make search and inquiry for any of the other jars that you took from the Jersey City Glass-Works at the same time, and were you able to find any of them?

A. I did make some inquiry, and could not find any of them.

JOHN L. MASON.

136 325. Q. Did you not consider that this improved jar of 1859 would infringe the patents you had given an exclusive license under, and which you subsequently sold?

A. My impression is that I had some such an idea.

326. Q. Are you not of the opinion that Mr. Fitzgerald so considered it in 1859?

A. Yes, sir.

327. Q. Was there any doubt in Mr. Fitzgerald's mind in 1859 about the improvement being a good one and worth patenting?

A. My impression is that he thought it was a good thing, and I think he thought he could get a patent on it.

328. Q. Was not the matter of the claim of the exclusive license to the patents granted you prior to 1859 arranged or fixed up between Mitchell, Fraiser and Payne, at the time you sold the legal title to Mitchell & Bennett, the company cancelling the license when such sale was made, and was not this license that Payne & Co. held arranged or settled between Mitchell and them on condition that you made the sale to Mitchell & Bennett?

(Objected to as irrelevant by Mr. Witter.)

A. I don't recollect in regard to the matter particularly now, but I know I made the sale to Mitchell & Bennett, and I think there was something about the cancelling of the license. The particulars I don't now recollect.

329. Q. Did not Mitchell, Fraiser & Payne control the cancelling of that license?

(Same objection.)

A. I think they did, sir.

330. Q. Are there not some differences between you and the complainant, or some of the officers of the complainant?

A. There is a difference between one of the officers and myself—that officer is the president of the company.

331. Q. Is it not true that you are not on speaking terms, and that there is not a friendly feeling existing between you?

137 (Objected to by Mr. Witter as irrelevant.)

A. It is true; we are not on any friendly speaking terms.

332. Q. Did you not sell the patent on which this suit is founded to the complainant; and have you not parted with your interest in said patent, so that you are not a party interested in this controversy?

(Objected to by Mr. Witter for the reason that the assumption is not broad enough for the inference stated therein, and the question is objected to for the reason that the complainant's counsel has no right to draw inference from its own premises.

Objected to further as leading the witness to a conclusion which could only follow when all the facts are known.)

A. I have sold the patent to the complainants, and therefore have no direct interest in the patent.

333. Q. Are you not at present engaged in the business as superintendent of the Standard Union Manufacturing Company of Camden, N. J., who are manufacturing or have been manufacturing fruit-jars which contain substantially some of the elements of your patents which have been sold to the complainant?

(Objected to by Mr. Witter as irrelevant.)

A. I am superintendent of the Standard Union Manufacturing Com-

pany, situated in New Jersey, but what we manufacture, or any business connected with the company, I decline giving any information.

334. Q. Were you not attached for refusing to answer questions in this suit Monday morning, December 8th, 1873?

(Objected to as improper to ask the witness why he was attached, if such was the fact, because the records and proceedings are the
138 only and proper evidence thereof; and counsel adds that for his part he does not think that the matter stated in the question was a cause for attachment, but counsel will not object to the production and use of such records.)

A. I was attached, but for what reason or for what cause I am ignorant of.

Adjourned until 11 a. m., Thursday, December 11th, 1873.

NEW YORK, *Thursday, December* 11, 1873—11 o'clock a. m.

Met pursuant to adjournment.

Mr. JOHN L. MASON, being cross-examined by Mr. Witter, says:

335. X Q. Are you not a stockholder in the complainant?

A. I have stock standing in my name on the books of the company.

336. X Q. What amount?

A. Fifty-five thousand dollars, I think, and I have fifteen thousand dollars besides in the hands of Stephen R. Pinckney in trust for the purpose of paying some liabilities that might arise against the company.

337. X Q. Is Stephen R. Pinckney the president of the complainant?

A. He is.

338. X Q. About what is the value per share of the stock of complainant company at the present time?

(Objected to as incompetent, irrelevant, and immaterial, and as it does not appear that the witness is competent to state such value.)

139 A. Well, I don't know as I can state that fact, except as a matter of belief, that it is worth probably par, because at the last annual meeting they declared a dividend of seven per cent. on the capital stock, and I suppose that would make it worth par.

(Answer objected to as irresponsive and improper by complainants' counsel.)

339. X Q. You testified in your direct examination regarding certain patents which were issued to you previous to the year 1859. Did you not learn from your experience in obtaining those patents how much money it required to obtain a patent from the Government?

(Objected to as immaterial by Mr. Todd.)

A. Yes, sir.

340. X Q. You sold those patents, did you not, which were so granted to you previous to 1859?

(Objected to, as having been already answered.)

A. Yes, sir.

341. X Q. And you sold them at or about the time that the alleged invention described in the patent in suit was made, did you not?

A. I think I sold the patents, as near as my memory now serves me, two or three months, perhaps two months, after I had made the said invention.

342. X Q. What amount in cash did you receive for those patents?

A. Two thousand dollars.

343. X Q. Did you not have that money, or some large part of it, for a considerable period after your said invention was completed?

(Objected to as immaterial, indefinite, and too general.)

A. I had the whole of it about the time of the completion of the invention, I think, because, as near as my memory serves me, I
140 made the invention in June, and completed it from one to two months afterwards, and received the two thousand dollars from two to three months after I made the invention, and therefore I must have had the larger portion of the money, as near as I can recollect, some time after I completed *of* the invention.

344. X Q. For how long a time did you so have this money or any large part of it, after the said completion of the invention?

(Objected to by Mr. Todd as immaterial.)

A. Well, I don't recollect; I put it into my business, and I suppose I had it along in my business all the time.

345. X Q. Was not your invention contained in the patent sued on completed at the time you speak of as having taken away the first lot of jars, one of which went to Mr. Fitzgerald; and if it was not so completed, will you enumerate what remained to be done to complete it?

A. It was all completed at that time.

346. X Q. Were you not at that time satisfied with its completion and perfection?

A. I was.

347. X Q. It was after this time of the completion and perfection of the invention, and after your satisfaction thereof, that you obtained a second lot of the same kind of jars and sold them, which jars you have spoken of in your direct examination, was it not?

A. Yes, sir.

348. X Q. Did you not sell the jars comprising this second lot for money?

(Objected to as immaterial and incompetent.)

A. I suppose I did.

349. X Q. Was it not for the purpose of getting money that you sold them?

(Same objection; as the witness has already testified that it was to test them, on the direct examination, that he sold them.
141 Counsel for defendant requests the counsel for complainant to point out, if he is able, any place in the direct examination where the witness has so testified; and the objection of complainant's counsel is here excepted to because it is a perversion of what the witness has said.)

A. Well, I suppose it was for the purpose of getting money, and to try them both.

350. X Q. Do you mean by "trying them" to see if they would sell well?

(Objected to as leading and improper, and as attempting to give a strained meaning to the witness's statement, and as immaterial.)

A. Yes, sir.

351. X Q. I do not suppose you had any other object in trying them, as you say, than to see if they would sell profitably, and to get the profit, did you?

(Same objections continued.)

A. I don't recollect any other now.

352. X Q. You never saw any fruit or other articles put into any of the jars of this second lot, that you recollect of, did you?

(Objected to as immaterial.)

A. Not as I recollect of.

353. X Q. You give in answer to direct interrogatory 184—which was as follows, "How many were in this second lot?"—the following answer:

"A few dozen of them; I can't state now how many; not a great many of them." Were there *there* as many as five or six dozen of those jars?"

(Objected to as the witness has fully answered, so far as his recollection will admit of, and as immaterial and incompetent.)

142 A. I don't now recollect, but I don't think there were more than that; there might not have been quite so many.

354. X Q. Did you not apply for, or take out, the patent for the garbage-box of which you have spoken in your answer to direct interrogatory 262 before you applied for the patent on which this suit is brought?

(Objected to as immaterial.)

A. I did, sir.

355. X Q. You have spoken of a period of time between 1861 and 1865, during which period you say your circumstances were limited; in what particular, and how limited; do you mean to say that you could not, during that period, with some effort, have commanded money enough of your own to get out a single patent?

(Objected to as immaterial.)

A. I mean by limited, I mean limited financially; I don't know but I might have got out a patent, if I had made an effort to have done so during that time, but I did not make an effort to do so.

356. X Q. In what occupations were you engaged during that period?

(Same objection.)

A. I don't recollect that I was doing anything; a portion of the time I was sick.

357. X Q. How long a time were you sick during that period, and what was your complaint?

A. Well, I was sick probably a couple of years; quite a long time; the exact time I don't recollect; the complaint was rheumatism.

358. X Q. Did your complaint render you incapable of work while you were so sick; and, if so, what part of the two years or thereabouts?

A. Well, as my memory serves me now, I was probably confined

143 to the house a couple of months; the rest of the time I was able to get about, except at spells a day or two at a time.

359. X Q. Where did you reside during this period, from 1861 to 1865?

A. Most of the time in New Jersey.

360. X Q. Will you be good enough to be a little more particular; whereabouts in New Jersey?

A. A portion of the time in Burlington County, a portion of the time in Camden County; from the latter part of 1859 to 1861 I was in the glass business in Camden County.

361. X Q. With the exception of this sickness, which you have mentioned, was your health good between 1859 and 1868?

(Objected to as immaterial.)

A. Yes, sir.

362. X Q. Did you not receive, in addition to the two thousand dollars, certain notes for the patents sold, as you have said, in 1859?

A. I did.

363. X Q. Will you state their amount?

A. Twenty-eight thousand dollars.

364. X Q. You say, in your direct examination, that there was a period of time when you think you did not see Mr. Fitzgerald; did you make any particular efforts to see him? If yes, state what they were.

A. I did not see him; I made no efforts to see him that I recollect of now.

365. X Q. Was not Mr. Fitzgerald in the Union Army during the late rebellion?

A. He was; at least I so understood.

366. X Q. During how long a time did you understand him to be so engaged?

A. I can't say; I don't recollect as ever hearing how long he was in the Army.

367. X Q. Did you, while he was so in the Army, consult any other attorney or patent-solicitor regarding your claim to these improve-
144 ments, or make any attempt to do so? If you did, give the name or names of said persons, and state what efforts you made.

(Objected to as immaterial.)

A. I don't recollect of doing any of those things the question calls for.

368. X Q. Were you at any time during this period between 1859 and 1868, yourself in the Army?

A. I was not, sir.

369. X Q. You have spoken, on your direct examination, of having seen, previous to your application for the patent sued on, certain jars on sale resembling the jar put in evidence, and marked "Complainant's Exhibit O, J. G., jr., ex'r;" was it not because you saw these jars that you were awakened to the idea of securing a patent for your invention?

(Objected to as immaterial and indefinite.)

A. I think it is likely it was.

370. X Q. Did not some of those jars have glass tops instead of tin tops?

A. I think I saw some glass tops before I saw the tin top; that is my recollection of it now.

371. X Q. Did these jars, having a glass cover, awake you to the importance of securing a patent for your alleged invention, or were you only aroused to that by seeing the jars with the tin cover?

(Objected to as leading and as assuming what is not warranted by the witness's statement and as immaterial.)

A. I was prompted by seeing the jar with the tin cover.

372. X Q. These jars with the glass covers, as well as those with the tin cover, were known as the "Hero Jar," were they not?

(Objected to as immaterial.)

145 A. I don't recollect; but my impression is now that they were; I am not clear upon that matter.

373. X Q. What is your recollection as to how these glass-top jars, which you so saw, differed, if at all, from your alleged invention contained in the patent sued on?

A. I don't know as there is any difference.

374. X Q. Were they not like the said exhibit, "Complainant's Exhibit O, J. G., jr., ex'r," except that the cover was glass instead of tin?

(Objected to as immaterial.)

A. As far as I recollect, I think they were.

And being re-examined by Mr. Todd, the witness says:

375. R. D. Q. Do you own the stock referred to in your answer to 336 cross-question?

A. I believe I do own the stock, for this reason: I sold the stock once and the company refused to transfer; and because they refused to transfer the stock I suppose I am the owner; it stands in my name on the books of the company to-day.

376. R. D. Q. To whom did you so sell the stock, and when?

A. It was sold to M. F. Lawson; well, probably four or five months ago; I can't tell exactly.

377. R. D. Q. Is not, then, that party the present owner of the stock? (Objected to, as the witness has already answered that he thought he himself was the owner.)

A. All I know is, about it, that the company won't recognize him as being the owner, and claim the stock to be mine, and won't transfer it; and, until it is transferred, I believe myself to be the owner.

378. R. D. Q. In your answer to interrogatory 338, you state that the stock is probably worth par; did you not offer this stock at a low figure in order to get rid of it?

146 A. I don't think I ever offered it for less than seventy-five cents on a dollar; still, I may have offered it at a lower figure, perhaps fifty cents.

379. R. D. Q. Did you not offer it to a Mr. Shaffer at fifty cents on the dollar?

A. Not to my recollection; still I wouldn't swear I did not.

380. R. D. Q. What consideration did you receive from Mr. Lawson for the stock?

A. I think Mr. Lawson paid seven hundred dollars.

381. R. D. Q. For what amount of stock?

A. Fifty-five thousand dollars' worth.

382. R. D. Q. Do you mean fifty thousand dollars' worth reckoned at par?

A. Reckoned at par.

383. R. D. Q. Was this all the consideration he was to pay for the stock? If not, at what rate was it to be paid for?

A. Well, I think that is inquiring a little too far; I don't think that has anything to do with the case, and I object to answering any further in that matter.

384. R. D. Q. Is this seven hundred dollars which Mr. Lawson paid you, all that he agreed to pay you for the fifty-five thousand dollars' worth of stock, nominal par value?

A. Seven hundred dollars is all that he has paid; and I object to answering any further.

385. R. D. Q. Then you refuse to tell, do you, what you in fact sold that stock to Mr. Lawson for?

A. I do not, sir; I will state here, for the information of the gentleman, that the stock was sold under an execution by the sheriff's deputy for the sum of seven hundred dollars to M. F. Lawson, and that is all I have got to say about it; but the stock still remains in my name on the books of the company to the amount of fifty-five thousand dollars, and fifteen thousand dollars in trust, as I have heretofore stated.

386. R. D. Q. How did this come to be sold by the sheriff? At whose instance was it attached or sold under execution; and for what indebtedness?

147 A. It was attached by, I think the gentleman's name was Fleming; it was for money due him.

387. R. D. Q. Was the attachment procured at your suggestion, or with your knowldedge?

A. I respectfully object to all such questions, and respectfully decline answering them.

388. R. D. Q. You state it was sold under execution; in what court was the judgment upon which execution was issued?

A. I do not know, sir.

389. R. D. Q. Was the judgment against you personally?

A. Yes, sir.

390. R. D. Q. How then is it that you do not know in what court it was obtained?

A. Because I don't recollect whether it was in the supreme court, superior court, or court of common pleas.

391. R. D. Q. Was there any defence made in the suit in which this judgment was obtained?

A. I don't recollect, but my impression is there was not, as I think the judgment was obtained on notes.

392. R. D. Q. When was this judgment obtained, and when was the sale under the execution?

A. Well, the exact time I don't recollect, but I think the judgment was obtained, probably a year ago, and it may be longer. The sale took place, I think, some five or six months ago; the exact time I don't remember.

393. R. D. Q. What was the amount of the judgment, and was it satisfied by the sale of the stock?

A. The amount of the judgment I don't recollect, but it was not satisfied by the sale.

394. R. D. Q. I will ask you to state the amount of the judgment, as near as you can recollect.

A. I think it was something in the neighborhood of five or six thousand dollars.

395. R. D. Q. In whose favor was this judgment rendered?

A. I think, Fleming.

148 396. R. D. Q. Was you engaged in Tansboro' from 1859 to 1861; and, if so, in what business?

A. I was; in the glass business.

397. R. D. Q. After that period, how long was you out of business?

A. I don't think I had any particular business from 1861 to 1865, as I now recollect.

398. R. D. Q. Where were you next engaged; were you not employed in a store? If so, where?

A. I was engaged in business in the city of New York, in the stove-business, from 1865 to 1868, I think.

399. R. D. Q. What do you mean by stove-business?

A. Engaged in selling goods of various kinds, such as stoves, tin-ware, house-furnishing goods, and furniture.

400. R. D. Q. Was this on your own account, or some other party or parties?

A. It was for other party and parties, not on my own account.

401. R. D. Q. Who were those other parties?

A. Well, I object to answering that question, as I can't see that it is necessary to give the names of parties to counsel, as my arrangements were of a private and confidential nature.

402. R. D. Q. Were you not, after leaving this place, sick for about a year?

A. I think not; at least I don't recollect of having any serious sickness after leaving the business just referred to. I left the stove-business and went into the jar business in 1868; that is my recollection now of that matter.

403. R. D. Q. Did you not call frequently on Boyd for money, of the Sheet-Metal Screw Co., and did you not call on him on crutches, and could not get any?

A. Yes, sir; I did, I think, in 1863.

404. R. D. Q. Over what interval of time did you call on Boyd for money?

A. I suppose it was a couple of years.

405. R. D. Q. Did you ever get any money from Henry Mitchell, direct, on the twenty-eight thousand dollars of notes he gave you?

149 A. I think I got two thousand dollars, in cash, either from him or from Mr. Bennett, I am not sure which; and now, since thinking the matter over, I think I got one thousand dollars in gold the day I signed the papers, from Andrew Bennett; the other thousand dollars, I am not sure how I got; my mind is not clear how I got the other thousand dollars, but the agreement was, to have two thousand on signing the agreement, and I feel sure I received it in the manner that I have stated.

406. R. D. Q. I do not refer to moneys outside of the notes. I mean how much did you get from Henry Mitchell, directly, out of the amount of notes he gave you?

A. Not anything.

407. R. D. Q. Did you get anything from them in cash, from any other parties?

A. Yes; I got fifteen hundred dollars in 1864, I think, of Lewis R. Boyd, for fifteen or sixteen thousand dollars of mutual paper; that is to say, of the notes given to me by Henry Mitchell.

408. R. D. Q. Did you pass or trade away any of these notes for merchandise?

A. Well, I have forgotten about that matter, but I am under the impression that I did; two or three thousand dollars, I think.

409. R. D. Q. What value in merchandise did you get for this amount of notes so traded away?

A. Well, I really don't recollect, and don't recollect what I traded it away for. I have a faint idea that I did trade off some of the notes.

Adjourned until 12 m., Friday, December 12, 1873.

150 NEW YORK, *Friday, December* 12, 1873—12 o'clock noon.

Met pursuant to adjournment.

Counsel as before.

Redirect examination of Mr. John L. Mason continued:

410. R. D. Q. You say in answer to cross 349th question that you suppose it was for the purpose of getting money, and to try them, both, that you sold the jars which you think you took away the second time. Do you mean to testify that the trial that you made of the jars in 1859 consisted in the selling of a small lot, you not recollecting to whom you sold such jars?

(Objected to as assuming that the lot was a small lot, and so coupled with other language as to both render the question leading and indefinite.)

A. I mean to say that the selling of those jars was merely to try and see if they could be sold, and to get pay for those I did sell; that was all.

411. R. D. Q. Are you prepared to swear that you did sell any such jars in the year 1859?

A. I am prepared to swear, as I now recollect, I did.

412. R. D. Q. Please answer the question, without any qualification, whether you will so swear or not.

A. I swear, to the best of my recollection, I did.

413. R. D. Q. Will you swear to whom you sold them?

A. No, sir; for I can't now recollect.

414. R. D. Q. State the city, street, and number where you sold them.

A. They were sold in the city of New York; the street and number I don't know; I can't recollect.

415. R. D. Q. Are you prepared to swear when they were sold?

A. I think in June, 1859.

416. R. D. Q. How much did you get for the jars—are you prepared to swear to that?

151 A. I think three or four dollars a dozen. I am not certain as to the exact price.

417. R. D. Q. Did you sell them to a jar dealer or to an auction-store?

A. I don't know, as I didn't sell them personally myself.

418. R. D. Q. Why did you not sell them personally yourself?

A. Simply because I didn't want to. There was another party that I thought would sell them as well as I.

419. R. D. Q. What reason was there for your not wanting to sell them personally yourself?

A. I don't know as I had any particular reason.

420. R. D. Q. Now, who did sell them for you, if you can recollect?

A. A man by the name of Robert Franklin.

421. R. D. Q. Is this the same Robert Franklin who was sent to the insane asylum on Blackwell's Island within the past few years, and who has since died at that place?

A. Yes, sir.

422. R. D. Q. You recollect, do you not, Robert Franklin's testimony, given in the Rowley suit, respecting this jar in question, both on the direct and cross examination; and, if so, did he state or intimate that he had ever sold any of said jars?

A. I don't recollect anything about what Mr. Franklin testified to.

423. R. D. Q. Will you swear that you do not recollect Mr. Franklin's testimony in the interference case between yourself and said Rowley, given some time in the year 1868 or 1869?

A. I will swear that I don't recollect the testimony given by Mr. Franklin in that suit at the present time.

424. R. D. Q. Then you did not either collect the money for these jars or know to whom said Franklin sold them?

A. Mr. Franklin gave me the money, but to whom he sold them I don't know.

425. R. D. Q. Then all you know about them is what Mr. Franklin told you. Is not this so?

A. Yes, sir.

152 426. R. D. Q. Over what period did the notes run which Mr. Mitchell gave you?

A. I think it was ten years, as near as I can recollect. It may have been nine and it may have been eleven, but my impression is ten; payable so much per year, running over the time I have just mentioned.

427. R. D. Q. Were they not made payable yearly, covering the period during which your patents, so sold, were to run?

A. Yes, sir.

428. R. D. Q. Did not Mr. Fitzgerald advise you, about the year 1865, to get out a patent for this improvement, as in his opinion the parties who were the holders of those patents, or the then holders of those patents, had no equitable title to them, because they had not complied with the agreement or contract under which they were sold?

A. Well, I have most forgotten in regard to that, but my impression is that there was some conversation of this character about the matter.

429. R. D. Q. Did you not remark to Mr. Fitzgerald, at such conversation, or some subsequent one, soon thereafter, that you would get out a patent in accordance with his advice as soon as you could conveniently do so?

A. I don't recollect now about the matter, but I have an opinion that there was some such conversation.

430. R. D. Q. Allow me to now refresh your recollection by asking you if you did not testify in the Rowley case as follows: "State when, in 1867, you were enabled to proceed with your application, and what occurred in the interval, namely, in 1868, when you did make your application?—Answer. I called on Mr. Fitzgerald in the early part of 1867 with the papers, and asked him whether he would not make the application on my improvement for jars. He told me he would
153 do it as soon as he felt a little better, and said he would call and see me, and let me know when he would do it. The last time he called on me, which was in the summer or late in the spring of 1867, he was going out of the city, and when he came back he would see if he could not get a patent on the improved jar. Relying upon the promise, I waited for months, expecting to see or hear from him, and when I did hear from him I heard that he was dead; that he had died in Washington. I then went to Messrs. Van Santvoord & Hauff, of this city, and made the application in January, 1868, for a patent on the improvement."

(Same objections as to direct interrogatory 142.)

A. I don't recollect what I testified to in the question, but I do recollect of having conversations with Mr. Fitzgerald, and I recollect that I waited some time for him to take out a patent, and I recollect, after hearing of his death, I went to Messrs. Van Santvoord & Hauff and applied for the patent, and probably it was in 1865 or 1866. That is about all I recollect about it.

431. R. D. Q. Allow me further to refresh your recollection by asking you if you did not also testify in the Rowley case as follows, in answer to a question:

"State what, if any, conversation took place between you and Mr. Fitzgerald in reference to such jar, (meaning the jar you took to him in 1859,) and state what it was.—Answer. There was a conversation between Mr. Fitzgerald and I in reference to the jar. The conversation was in the summer of 1859; consulted Mr. Fitzgerald about getting a patent for the improvement. Mr. Fitzgerald informed me it was a good improvement, and worthy of a patent, and had no doubt he could get me a patent for it; but if I should succeed in getting
154 a patent I could not use it, as it would infringe other patents which I then had obtained, and which I had given an exclusive license to other parties to manufacture, and advised me not to get it patented at present."

(Same objection as to direct interrogatory 142.)

A. Well, I don't recollect much about the details of the conversation, but I think there was some such conversation with Mr. Fitzgerald.

432. R. D. Q. Will you swear that you did not so testify in the Rowley suit, as inquired in the two last interrogatories?

(Counsel for complainant is requested to state the object of asking this question.

Counsel for complainant not complying with such request, the question is objected to, for the reason stated to direct interrogatory 153.)

A. I will not, sir.

433. R. D. Q. Having reference to your answers to redirect 428th and

429th questions, permit me to refresh your memory by asking you if you did not also testify in the Rowley case as follows:

"Question. Had you any other and subsequent conversation to these with Mr. Fitzgerald with reference to such improvements? If so, under what circumstances?—Answer. The conversations which I had referred to in my fosmer answer took place prior to the year 1866. In 1866 I called to see Mr. Fitzgerald in regard to taking out a patent for this improvement in jars. This time he stated, as he had stated before, that to work this improvement I must necessarily infringe on the patents I had already obtained, but he advised me to get out a pat-
155 ent for the improvement, for his opinion was that the parties who were then the holders of my patents had no equitable title to them, because they had not complied with the agreement or contract under which they were sold. The conversation, in thinking over, took place between Mr. Fitzgerald and I on Sixth avenue, and it was in the latter part of 1865 instead of 1866. We had other conversations from that time to the spring of 1867, or early in the summer. On several occasions I told him that I would get out a patent in accordance with his advice as soon as I conveniently could do so."

(Same objection as to direct-interrogatory 142.)

A. I don't recollect now in regard to this matter. I had several conversations with Mr. Fitzgerald along the time referred to by the counsel, and I may have had some such conversation as he speaks of, but I have no recollection of it.

434. R. D. Q. Will you swear that you did not so testify in the Rowley suit?

(Same request and objection are here made as to redirect-interrogatory 153.)

A. No, sir.

435. R. D. Q. What time elapsed between your seeing the glass top and tin top jars referred in your answer to cross-interrogatory 370?

A. I don't know that I can tell; it might have been a year; it might not have been over nine or ten months. I know it was some considerable time.

436. R. D. Q. Are you prepared to swear to any particular time?

A. No, sir; I am not, excepting that it was some considerable time before I saw the tin top.

437. R. D. Q. Question repeated.

A. I am not.

156 438. R. D. Q. What company do you refer to in the latter part of your answer to 336 interrogatory?

A. The Consolidated Fruit-Jar Company, of New York.

439. R. D. Q. Do you not mean stock of the consolidated company left in trust to pay what liabilities might arise against the old or Mason Manufacturing Company?

A. Yes, sir.

440. R. D. Q. Where is J. M. Sinclair now?

A. He is at Camden, New Jersey.

441. R. D. Q. Is he not in your employ, or in the employ of the company whom you represent as superintendent?

A. He is in the employ of the company.

442. R. D. Q. Before you commenced to give your testimony in this case did you not request complainant's counsel not to ask you anything respecting the questions which you would be asked during this examination?

A. I did.

429. R. D. Q. Did you not remark to Mr. Fitzgerald, at such conversation, or some subsequent one, soon thereafter, that you would get out a patent in accordance with his advice as soon as you could conveniently do so?

A. I don't recollect now about the matter, but I have an opinion that there was some such conversation.

430. R. D. Q. Allow me to now refresh your recollection by asking you if you did not testify in the Rowley case as follows: "State when, in 1867, you were enabled to proceed with your application, and what occurred in the interval, namely, in 1868, when you did make your application?—Answer. I called on Mr. Fitzgerald in the early part of 1867 with the papers, and asked him whether he would not make the application on my improvement for jars. He told me he would
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(Same objections as to direct interrogatory 142.)

A. I don't recollect what I testified to in the question, but I do recollect of having conversations with Mr. Fitzgerald, and I recollect that I waited some time for him to take out a patent, and I recollect, after hearing of his death, I went to Messrs. Van Santvoord & Hauff and applied for the patent, and probably it was in 1865 or 1866. That is about all I recollect about it.

431. R. D. Q. Allow me further to refresh your recollection by asking you if you did not also testify in the Rowley case as follows, in answer to a question:

"State what, if any, conversation took place between you and Mr. Fitzgerald in reference to such jar, (meaning the jar you took to him in 1859,) and state what it was.—Answer. There was a conversation between Mr. Fitzgerald and I in reference to the jar. The conversation was in the summer of 1859; consulted Mr. Fitzgerald about getting a patent for the improvement. Mr. Fitzgerald informed me it was a good improvement, and worthy of a patent, and had no doubt he
154 could get me a patent for it; but if I should succeed in getting a patent I could not use it, as it would infringe other patents which I then had obtained, and which I had given an exclusive license to other parties to manufacture, and advised me not to get it patented at present."

(Same objection as to direct interrogatory 142.)

A. Well, I don't recollect much about the details of the conversation, but I think there was some such conversation with Mr. Fitzgerald.

432. R. D. Q. Will you swear that you did not so testify in the Rowley suit, as inquired in the two last interrogatories?

(Counsel for complainant is requested to state the object of asking this question.

Counsel for complainant not complying with such request, the question is objected to, for the reason stated to direct interrogatory 153.)

A. I will not, sir.

433. R. D. Q. Having reference to your answers to redirect 428th and

429th questions, permit me to refresh your memory by asking you if you did not also testify in the Rowley case as follows:

"Question. Had you any other and subsequent conversation to these with Mr. Fitzgerald with reference to such improvements? If so, under what circumstances?—Answer. The conversations which I had referred to in my fosmer answer took place prior to the year 1866. In 1866 I called to see Mr. Fitzgerald in regard to taking out a patent for this improvement in jars. This time he stated, as he had stated before, that to work this improvement I must necessarily infringe on the pat-

155 ents I had already obtained, but he advised me to get out a pat-

ent for the improvement, for his opinion was that the parties who were then the holders of my patents had no equitable title to them, because they had not complied with the agreement or contract under which they were sold. The conversation, in thinking over, took place between Mr. Fitzgerald and I on Sixth avenue, and it was in the latter part of 1865 instead of 1866. We had other conversations from that time to the spring of 1867, or early in the summer. On several occasions I told him that I would get out a patent in accordance with his advice as soon as I conveniently could do so."

(Same objection as to direct-interrogatory 142.)

A. I don't recollect now in regard to this matter. I had several conversations with Mr. Fitzgerald along the time referred to by the counsel, and I may have had some such conversation as he speaks of, but I have no recollection of it.

434. R. D. Q. Will you swear that you did not so testify in the Rowley suit?

(Same request and objection are here made as to redirect-interrogatory 153.)

A. No, sir.

435. R. D. Q. What time elapsed between your seeing the glass top and tin top jars referred in your answer to cross-interrogatory 370?

A. I don't know that I can tell; it might have been a year; it might not have been over nine or ten months. I know it was some considerable time.

436. R. D. Q. Are you prepared to swear to any particular time?

A. No, sir; I am not, excepting that it was some considerable time before I saw the tin top.

437. R. D. Q. Question repeated.

A. I am not.

156 438. R. D. Q. What company do you refer to in the latter part of your answer to 336 interrogatory?

A. The Consolidated Fruit-Jar Company, of New York.

439. R. D. Q. Do you not mean stock of the consolidated company left in trust to pay what liabilities might arise against the old or Mason Manufacturing Company?

A. Yes, sir.

440. R. D. Q. Where is J. M. Sinclair now?

A. He is at Camden, New Jersey.

441. R. D. Q. Is he not in your employ, or in the employ of the company whom you represent as superintendent?

A. He is in the employ of the company.

442. R. D. Q. Before you commenced to give your testimony in this case did you not request complainant's counsel not to ask you anything respecting the questions which you would be asked during this examination?

A. I did.

The witness being recross-examined by Mr. Witter, says:

443. R. X Q. How much, about, did it cost you to take out the patent on which this suit is brought?

A. About fifty dollars.

444. R. X Q. You were asked, in your redirect examination, about your being in business for some periods between 1861 and 1865; do you mean to say that you did not, while so in business, have money enough to get out this patent?

A. No, sir; I don't, because I had. The large portion of the time I hadn't any money to spare; but during the time I had some money; if I chose to do so, I could have done it.

(The examiner is requested to read to the witness 435, 436, and 437 redirect questions and their answers.)

(Questions and answers read.)

445. R. X Q. Do you mean by those answers to say that you did not see the glass-top jars referred to before you saw the tin top?

157 A. I mean to say that I did see the glass-top jar before I saw the tin top; but I can't state the exact time within two or three or four months.

The witness being re-examined by Mr. Todd, says:

446. R. D. Q. Will you swear positively that you saw a glass-top before you saw a tin-top fruit-jar; and, if so, what enables you to be able to so swear when your recollection is so imperfect respecting material matters which you have been asked about in your direct examination?

(The first part of the question objected to as having been already answered; the last part as assuming to judge what is imperfect and what is material, and also as leading.)

A. I swear positively that I did see a glass-covered jar before I saw a tin-covered one. I saw it in Philadelphia.

JOHN L. MASON.

Subscribed and sworn to before me this 12th day of December, 1873.

JOSEPH GUTMAN, Jr.,
Examiner, &c.

(Counsel for complainants puts in evidence a certified copy of Mason's file-wrapper and contents, in the matter of the letters-patent granted John L. Mason, dated May 10th, 1870, No. 102913, for Improvement in Fruit-Jars. It is marked "Complainant's exhibit, Mason's File-Wrapper."

Also puts in evidence the decision of the supreme court of the District of Columbia in the matter of the appeal of John L. Mason

158 from the decision of the Commissioner of Patents in the matter of letters-patent granted John L. Mason May 10th, 1870, No. 102913. It is marked "Decision exhibit, April 25th, 1870."

(Objected to as irrelevant.)

Complainant's testimony closed.

Complainant's exhibit.—Commissioner's decision.—J. G., Jr., Exr.

The United States Patent-Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office.

In testimony whereof I, Elisha Foote, Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed, this twenty-seventh day of February, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-third.

ELISHA FOOTE.

159 UNITED STATES PATENT-OFFICE,
February 17, 1869.

Appeal from a decision of the examiners-in-chief denying the application of John L. Mason for a patent for an improvement in "fruit-jars," and affirming a decision of the examiner in charge awarding priority of invention for the same device to S. B. Rowley.

BY THE COMMISSIONER:

Mason claims to have made a new combination consisting of three elements, to wit;

1st. A shoulder to receive the rubber gasket outside and a little below the top of the jar;

2d. A cover with its rim extending down outside of the top, and pressing upon the gasket; and

3d. A screw ring to hold down the cover, with its screw-threads below the gasket shoulder. It is not claimed that any of these elements were invented by him; indeed, combinations of two of them are found in other patents; Gilbert has the cover and the shoulder; Gillender and Bennett have the cover and the screw-ring; but the combination of the three seems to be new.

It was the opinion of the board of examiners-in-chief that the change from Gillinder and Bennett's device to that of Mason, with Gilbert in view, was too obvious and a matter of course to require invention, and that it involved nothing but an exercise of ordinary mechanical skill. I should have no difficulty in coming to the same conclusion but for the important practical advantages of Mason's combination.

In manufacturing the jar the shoulder is formed by the mould, and if that be perfect the shoulder will be perfect without any fitting. But if the gasket be placed upon the top of the jar, as Gillinder and Bennet's did, the top must be ground and fitted to receive the gasket; and if there be any defect in the glass, or want of skill in the workmanship, the jar will fail to effect its object.

160 Where great quantities are to be supplied at a cheap rate, such a consideration becomes one of great importance. Besides, a gasket on the top of the jar is liable to come in contact with the fruit, and impart to it an unpleasant flavor.

The shoulder and the cover would be imperfect without the screw-ring to hold the latter in place. The combination of the three seems to me to have made an advance on previous devices, and to have united many desirable qualities. Viewing with liberality, as I do, every real improvement, I can but regard the new combination as involving invention and entitled to a patent.

The testimony satisfies me that Mason made the invention in 1859, and consequently before the invention by Rowley in 1866 of the same combination.

Mason's delay to apply for a patent does not appear to me to show an abandonment of his invention. He seems to have contemplated a patent from the first; and, as soon as he learned that others were in pursuit of the same object, he lost no time in making his application.

The decisions refusing a patent to Mason, and awarding priority of invention to Rowley, must be reversed.

The claims in the specification of Mason do not express clearly the combination I have referred to. I think they should all be disallowed, and that a patent should be issued to him for the following claim:

"I claim the combination, 1st, of the shoulder *b* to receive a gasket outside and a little below the top of the jar; 2d, of the cover B with its rim *d* extending down outside of the top and pressing on the gasket *c*; and, 3d, of the screw-ring C, with its screw-threads operating upon those of the jar below the gasket shoulder"—all substantially as above set forth and described.

ELISHA FOOTE,
Commissioner.

161 *Complainant's exhibit.—D. C. supreme court decision.—J. G. Jr., Ex'r.*

In the matter of the interference between S. B. Rowley's application for letters-patent for an improvement in fruit jars, and the application of John L. Mason for letters-patent for the same invention, on appeal from the decision of the Commissioner of Patents awarding priority to Mason.

In this case two issues are presented—one of fact, the other of law. The question of fact is whether Mason or Rowley was really the prior inventor of the device in controversy; and the question of law is whether, supposing Mason to have been the first discoverer in point of fact, he has not forfeited his right to a patent by reason of having slept for years on his invention.

Upon a careful consideration of all the testimony in the case, I have come to the conclusion, though with much hesitation, that Mason invented the device claimed in this case in the year 1859, and reduced his invention to fixed, positive, and practical form; and is therefore the first inventor.

I now proceed to the inquiry whether he has or has not forfeited his rights to a patent as against a subsequent independent inventor, for there is no question in my mind that Rowley is such.

Mason perfected his invention in 1859, but failed to file his application until January, 1868; a period of about nine years thus intervening between the time of the perfection of his invention and the making of his application for letters-patent.

In the mean time, to wit, during the year 1866, Rowley, with-
162 out any knowledge, so far as appears to us, of the invention having been made by Mason, perfects the identical device which Mason had perfected seven years previously, and files his application November 26th, 1867. Rowley seems not to have lost any time unnecessarily in making his claim, and undoubtedly would have been entitled to his patent if the device had never been invented by Mason. So, if Mason had not perfected his invention, Rowley would have undoubtedly been entitled to a patent on his. No principle of patent law is better settled than that which was declared by Justice Story, in the case of Woodcock vs. Parker, 1st Story, 590, wherein he says: "In a race of diligence between two independent inventors, he who first reduces his invention to a fixed, positive, and practical form would seem to be entitled to a right to a patent therefor." This principle is founded in sound policy. The great object of the patent law is the promotion of the arts and sciences as rapidly as possible by means of holding out to

inventors an exclusive monopoly in their inventions for a limited term; and the principle laid down by Justice Story conforms to the spirit of our patent system. Were it otherwise than he decided, inventors would sleep upon their inchoate inventions and put off their reduction to practical form to a more convenient season; the result of which would be, in many instances, the loss of useful inventions and improvements which they had begun and might well have perfected, whilst other inventors would be deterred from expending their money and brain-work in perfecting inventions by the apprehension that some more sluggish genius might step in and anticipate the fruits of his labor at the eleventh hour. The same sound policy seems to me to require that, as between two independent inventors, the one who has perfected his invention, but chooses to sleep upon it for nine years, or even a less period, and is only aroused from his slumbers by the application of a subsequent inventor for his patent, has no right to complain if that application should meet with success. It is also well settled that he who has abandoned an invention, even after it has been perfected, and dedicates it to
163 the public, no matter for what reason, the dedication cannot be recalled. (See Ransom vs. Mayor of New York, 1 Fisher, 252.)

In the case of Adams vs. Jones, 1 Fisher, 527, it was decided that a man might justly be treated as having abandoned his application for a patent if by reason of laches on his part his application was not prosecuted with reasonable diligence.

In White vs. Allen, 2 Fisher, 440, it was decided that when an invention is voluntarily broken up and laid aside without any controlling impediments in the way of an application for a patent, and another in the mean time invents the same thing without any knowledge of that which is so suspended, and reduces the same to practice, applies for and takes out his patent, and introduces the patented invention to public use, he must be regarded as the original and first inventor of the improvement.

These decisions are all founded upon the same sound policy to which I have alluded. It is true that the law looks with indulgence upon delays which arise from the circumstances of parties who may make an invention; but it is equally true that when the invention, although perfected, has been intentionally abandoned or neglected, or the parties show by their acts that they have not done all that they can do, the law declares that they shall not be protected. (See Sayles vs. Chicago and Northwestern Railroad Co., 2 Fisher, 523.)

In this case I fail to see any reason why Mason could not have prosecuted his claim for a patent as well in 1860 or '61 as after Rowley had filed his application. He has certainly been guilty of laches in so long sleeping upon his invention, and I can account for his neglect in no other way than upon the ground that he had abandoned it. It would certainly be bad policy if, after the space of nine years from the perfection of an invention, during all which time it was kept a secret in the brain of the inventor, he might come into the Patent-Office and defeat the claim of a subsequent and independent inventor, who, honestly believing himself to be the first discoverer of the improvement, had
164 invested his whole estate in an honest effort to give the public the benefit of his labors. If one might lie quietly for nine years, he might do so for forty. Such a rule of law, we may readily see, so far from tending to encourage the promotion of the arts and sciences, would tend greatly to its discouragement, because no man would feel safe against the dishonest practices of the marauders or pirates, who would not find it difficult to procure, for a reward, witnesses enough to swear

up his priority, and fix a period of discovery which the honest inventor would find it hard enough to disprove.

It is admitted by Mason that if the patent for the device in question had been obtained by Rowley, his (Mason's) claim for a patent could not properly have been allowed. But I can see no reason for the distinction between the case where the patent has been obtained by the subsequent and independent inventor, and a case of a pending application of the latter. What is the reason why the obtaining of a patent by a subsequent inventor should operate to prevent the issuing of a patent to the original inventor sleeping for years on his discovery? It certainly cannot be because of the obtaining of the patent per se, for a patent may issue to one, and if afterwards application is made by another who can show himself to be the prior inventor, and not in fault in making his application after the first patent had been issued, the obtaining of the first patent would be no impediment to his obtaining a second. There must be, therefore, some other reason, and I find that reason in sound policy, which dictates that inventors should not be allowed to play the part of the dog in the manger, by putting aside their inventions and keeping them a secret from the world for a long period of years, and only bringing them to light when they have learned that some other inventor has made the identical discovery and is about to benefit himself and the world by making it public.

To *any* mind there can be no stronger evidence of an intention to abandon an invention than by breaking it in pieces or throwing it aside, and thus neglecting it for a period of nine years. For these reasons
the decision of the Commissioner of Patents is reversed, and it is
165 ordered that a patent be issued to S. B. Rowley for the invention in controversy.

GEO. P. FISHER,
Justice Supreme Court, D. C.

MAY 1, 1869.

DISTRICT OF COLUMBIA, *to wit:*

I, R. J. Meigs, clerk of the supreme court of said District, do hereby certify that the foregoing copy of an opinion delivered by Justice Geo. P. Fisher, in the case above stated, is truly copied from the original on file in the clerk's office of said court.

Witness my hand and the seal of said court this 4th day of December, 1873.

[SEAL.] R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Assistant Clerk.

DISTRICT OF COLUMBIA, *to wit:*

I, D. K. Cartter, chief-justice of the supreme court of the District of Columbia, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form and by the proper officer.

Witness my hand and seal this 4th day of December, 1873.

D. K. CARTTER, [SEAL.]
Chief-Justice Sup. Ct.

DISTRICT OF COLUMBIA, *to wit:*

I, R. J. Meigs, clerk of the supreme court of the District of Columbia, hereby certify that D. K. Cartter, whose genuine signature is subscribed
to the foregoing certificate, was, at the time of signing and attest-
166 ing the same, chief-justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 4th day of December, 1873.

[SEAL.]

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Assistant Clerk.

Compla'nant's exhibit.—Mason file wrapper.—J. G., Jr., Exr.

Complainant's exhibit.—Decision, April 25, 1870.—J. G., Jr., Exr.

In the supreme court of the District of Columbia.

In the matter of the appeal of John L. Mason from the decision of the Commissioner of Patents.

This case comes up on appeal from the decision of the Commissioner of Patents, dated April 9th, 1870, submitting the following questions, viz:

First. Whether the fact of an interference between the two applications of John L. Mason and Salmon B. Rowley was discussed, considered, or decided by me in the case referred to in the Commissioner's decision, in this:

Second. Whether the proposition in regard to laches of the ap-
167 plicant, John L. Mason, was intended to apply to the case of an ex-parte application with the same effect as when the rights of an adverse claimant were likely to be effected by such laches.

In reply to the first question, I have to say, that the fact of interference was not questioned, but seemed to be assumed by counsel on both sides in the argument before me, and was neither questioned, discussed, considered, nor decided by me, except thus far, that it did occur to me at the opening of the case that the devices were not exactly identical, but as that question was not involved in the reasons of appeal, or made by the counsel in argument, I thought I ought, under the law, to confine my judgment to such questions only as were so involved in the reasons of appeal.

In reply to the second question, I have to say, that the case before me being that of adverse claimants, the proposition in regard to laches had reference and was intended to apply to such cases only, and not to the case of an ex-parte application. The view which I entertain on the subject of laches is simply this, that the inventor who conceals his invention, or fails to take the steps necessary to secure his patent therefor, does so at the risk of being postponed in his claim by the coming in of a subsequent independent inventor, who is diligent in giving the world the benefit of his invention, just as he takes the risk of losing the benefit of his invention by consenting to or allowing its public sale or use for the time fixed in the act of Congress as a bar against him. If he conceal his invention for any length of time, no matter how long, and it does not get into public use or on sale for more than two years by his consent or allowance, and it is not subsequently invented by another, who applies before him, and there be reasonable ground to believe that he did not abandon it, I do not suppose that lapse of time would be cause for refusing his application for a patent. The decision of the Commissioner is reversed.

GEO. H. FISHER,
Jus. S. C. D. C.

168 DISTRICT OF COLUMBIA, *to wit:*

I, R. J. Meigs, clerk of the supreme court of said District of Columbia, do hereby certify that the foregoing decision of George P. Fisher, justice of said court, is truly copied from the original on file and of record in the clerk's office of said court, as delivered on the 25th of April, 1870, in the matter of an appeal by John L. Mason from the decision of the Commissioner of Patents.

Witness my hand and the seal of this court this 10th of December, 1873.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Assistant Clerk.

I, David K. Cartter, chief-justice of this court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 10th day of December, 1873.

D. K. CARTTER, [SEAL.]
Chief-Justice.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief-justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 10th day of December, 1873.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Assistant Clerk.

169 U. S. circuit court in and for the southern district of New York.

CONSOLIDATED FRUIT-JAR COMPANY *vs.* JAMES T. WRIGHT. } In equity.

Depositions of witnesses on behalf of respondent, taken by William Grier Hibler, a special examiner, (duly appointed by said court, as appears by certified copy hereto annexed,) under the 67th rule of the Supreme Court of the United States, at his office, No. 435 Library street, in the city of Philadelphia, in the State of Pennsylvania, commencing on Saturday, twenty-seventh day of September, A. D. 1873, at 10 o'clock a. m., and thereafter, pursuant to adjournment.

Present, Charles Howson, esq., for respondent; A. J. Todd, esq., for complainants.

170 WILLIAM A. LEAVITT, being duly sworn, says:

1. Q. What is your name, age, residence, and occupation?

A. William A. Leavitt; aged nearly 33 years; residence, 2305 Green street, Philadelphia; occupation, agent for S. B. Rowley.

2. Q. How long have you been in Mr. Rowley's employ?

A. Since August, (middle,) 1865.

3. Q. What is Mr. Rowley's business; what has it been since you went into his employ, and where is it carried on?

A. Fruit-jar manufacturer; principally fruit-jar manufacturing; Gaul and Adams street, Philadelphia.

4. Q. Describe the fruit-jars made by Mr. Rowley when you went into his employ in 1865.

A. They were glass jars with a threaded neck, with a glass stopper which sealed on a rubber gasket, which rested on the top of the neck of the jar; the stopper being confined to the jar by a thin elastic metal ring made of zinc, which was threaded, the threads fitting the corresponding threads on the neck of the jar, the ring being used as a lock to press the glass stopper tightly down on the gasket and insuring its making an air-tight joint. This jar was named the "Excelsior."

5. Q. How long, if you recollect, was the making of this jar continued after your entry into his employ?

A. I think directly for his own sales about a year.

6. Q. Please examine carefully the jar now shown to you, and state in what, if in any, material respect it dieffrs from those which you have described in your answer to interrogatory No. 4.

A. I should say that it did not differ at all; it looks to me like one of the jars then manufactured by Mr. Rowley.

7. Q. If during any part of the time during which Mr. Rowley was manufacturing the "Excelsior" jar he also manufactured any other style of fruit jar, please state in what, if in any, material respect this other style differed from the "Excelsior."

A. He commenced to manufacture in March, 1866, a jar known as the "Hero" jar, which was a glass jar with a shoulder below the neck for a rubber gasket to rest upon, with a groove or rabbit at the
171 base of the neck, at the upper part of the shoulder, with threads on the jar below the shoulder, with an overlapping glass cap or stopper which rested upon the gasket on the shoulder, and a thin elastic screw-ring or lock made of zinc, whose threads fitted corresponding threads on the jar or bottle.

8. Q. Please examine the jar now shown to you and state in what, if any, material respect it differs from the jar which you have stated Mr. Rowley commenced to manufacture in March, 1866.

A. It does not differ at all; it is exactly like the jars he made at that time, and, I think, is one of them.

(Counsel for respondent offers in evidence the jar referred to in interrogatory 6, and the answer thereto, said jar being marked "Defendant's exhibit No. 1," and also jar referred to in interrogatory 8 and the answer thereto, said jar being marked "Defendant's exhibit 2.")

9. Q. Please state, if you can, how many jars such as Exhibit 2 were made and sold by Mr. Rowley prior to January, 1868.

A. I should think from 150 to 200 gross.

10. Q. If during the year 1866 Mr. Rowley also manufactured jars differing from Exhibits 1 and 2, please describe the feature or features of difference as respects Exhibit 2.

A. Mr. Rowley also commenced to manufacture in March, 1866, a jar called the "Hero" jar, exactly like Exhibit 2, with the exception that in the place of the glass overlapping stopper it had a thin elastic metal stopper like this now shown me, marked "Defendant's exhibit No. 3."

11. Q. Can you now state about how many of the jars having covers, such as Exhibit 3, were made and sold by Mr. Rowley prior to January, 1868?

A. I should want to look at the books to see that exactly, but it was several thousand gross.

12. Q. Are you or not acquainted with Charles G. Imlay, of this city? About when and where did you become acquainted with him?

172 A. I am. I became acquainted with him about January or February, 1866, at Mr. Rowley's store, No. 16 and 18 N. Fifth street, in this city. He came there to see Mr. Rowley to get him to take hold of a fruit-jar called the "Hero," which was like Exhibit 2. He wanted Mr. Rowley to manufacture and sell this jar on a royalty under a license; and on the 7th day of March, 1866, Mr. Rowley entered into articles of agreement with him to manufacture jars like Exhibit 2 for him, at which time he gave Mr. Rowley a license, which license was to be an exclusive license for the manufacture and sale for the United States.

(The part of answer giving contents of the instruments of writing objected to.)

13. Q. If at the time you say you first met Mr. Imlay he had a jar with him, and you saw that jar, will you please give your recollection as to the particular points of difference, if any there were, between that jar and Exhibit 2?

A. The jar Mr. Imlay had with him when he came to Mr. Rowley's store, No. 16 & 18 North Fifth street, in February, (I think,) 1866, was similar in all respects to Exhibit 2, with the exception that that was a flint glass ½-gallon jar, and had been made in a mould that left lugs on opposite sides of the jar, below the thread. The mould was one, I think, made originally to blow Otterson jars in, and the thread was afterward cut into the neck of the mould above the lugs referred to, so as to hold the glass stopper to the gasket on the shoulder by means of a screw metallic ring, like this on Exhibit 2, instead of an iron clamp such as Otterson had previously used.

14. Q. How do you fix the time when Mr. Rowley commenced to manufacture the jars like Exhibit 2?

A. Because he began to receive jars like it in March, 1866. He first received some glass stoppers similar to that like Exhibit 2 from Mr. Imlay about the middle of March, 1866, and the latter part of March, same year, he received some from the glass-works at Medford, New Jersey. The first jars were blown in March, 1866, by a firm named Christie & Sons, of Philadelphia, in Kensington or Richmond. Jars were also made that year by Whitehall, Tatem & Co., of Millville, New Jersey, but most of the jars were made by the Riverside Glass-
173 Works, of Progress, N. J., who also made a great many glass stoppers.

15. Q. If you have with you any books or papers from which you have ascertained the particular dates given in your last answer, will you please refer to them?

A. I have before me a bill dated March 27th, 1866, of Lewis Ireland to S. B. Rowley, for one 35–72 gross Imlay jar-stoppers, bill marked "Defendant's exhibit No. 4."

(Answer objected to by complainant's counsel as incompetent evidence.)

I also have before me a bill of the Riverside Glass-Works against S. B. Rowley, dated Progress, August 21, 1866, for jars and stoppers furnished from May 29, 1866, to August 30, 1866, for about 700 gross of jars and stoppers, on which there is a credit of 407 gross glass stoppers which they did not furnish.

The understanding with the Riverside Glass-Works was that they were to furnish both the jar and stopper, and the jars are billed at the price per gross Mr. Rowley was to pay for the jars and stoppers, but he afterwards used or sold a great many of the jars with metal stoppers like Exhibit No. 3, and therefore they did not furnish all the jars with glass

stoppers. In my answer to interrogatory No. 9, I intended to say that I thought about 150 to 200 gross of glass-stoppered Hero jars were sold by Mr. Rowley during the year 1866.

(Bill of Riverside Glass Co. referred to by this witness offered in evidence, and marked "Defendant's Exhibit No. 5.")

(Same objection continued.)

16. Q. If you have with you any books or book-entries showing shipments of jars like Exhibit 2, will you please refer to and read the earliest of such entries, and state, if you know, by whom such entries were made?

174 A. I have a book of S. B. Rowley, extending over a period from February 10, 1866, to July 7, 1867, also his day-book extending from July, 1867, to June, 1868. The first entry in the first book of Hero fruit-jars, made to Graham & Moore, Norfolk, Va., in which is a shipment 5 7–12 doz. quart Hero jars. The entry is in my handwriting; also, the entry of their having been shipped by Richmond steamer of April 24, 1866; also, a memorandum that the bill was mailed in my handwriting.

Copy of entry from day-book, p. 53.

April 23, Graham & Moore:

½ doz. glass ref. round loops, 5	$2 50
8 5–12 qt. excel. jars, 5 off, $2.50	20 19
5 7–12 qt. Hero jars, $2.50	13 26
Cartage	25
	$36 20

Bill enclosed.

Shipped Richmond steamer, April 24, 1866.

In the same book, page 70, there is an entry of May 17, 1866, to J. Sterner, Minersville, Pa., in which is a shipment of ⅔ of a gross quarts, metal tops, jars. This entry is in my handwriting, and marked "Shipped Reading Railroad, June 26, 1866." The words metal tops here were used to distinguish the metal-top Hero jars from the glass-top Hero jar.

On page 71, same book, there is an entry in my handwriting to Josiah McMurtrie, Mauch Chunk, Pa., May 19, of ⅔ gross quart glass-top jars, and ½ gross ½-gallon glass top jars, marked "Shipped Reading Railroad, June 28, 1866."

These entries continue right along through the book in my handwriting, and are all marked either metal tops or glass tops, so as to show which kind of jars were ordered by the parties and shipped to them. The same is true of the other day-book, which is most all of it in my handwriting.

175 Counsel for complainants requests that said books may be marked for identification, which is accordingly done, No. 6 and No. 7, for identification.

17. Q. Please refer to these day-books, and state some of the different points to which jars such as Exhibit 2 appear from them to have been shipped, giving the names and dates in the entries to which you may refer.

A. On page 94, of Exhibit 6, there is an entry, June 13, 1866, to William F. Bokee & Co., Baltimore, Md., 2½ gross glass, which means glass-top jars. On page 107, June 21, 1866, there is an entry to James Prang-

ley, Lancaster, Pa., for 1⅛ gross quarts, glass, which means glass-top jars. On page 108, June 22, 1866, to B. H. Hall & Co., Binghampton, N. Y., 4 gross of quarts, glass tops, which means glass-top jars.

On page 123, June 30, 1866, to Dickinson & Voak, Corning, N. Y., in which there is an entry for both metal and glass tops, (quarts.) In 1867 we do not appear to have made any distinction between metal and glass tops; they are all put down as Hero jars.

Cross-examined by Mr. Todd:

18. Cross Q. Who made the mould or moulds for the top of excelsior jar Ex. No. 1, which you say was being made by Mr. Rowley when you went into his employ in 1865?

A. I don't know. He had them when I first went with him. They were at the factory where he had his glass made.

19. Cross Q. Did you ever see the mould or moulds?

A. Not to my recollection.

20. Cross Q. Do you know where such mould or moulds are now?

A. I do not.

21. Cross Q. Do you know who made the mould or moulds in which were pressed the glass tops like the tops on defendant's Exhibit No. 2?

A. I do not know who made the first one. I think Mr. C. G.
176 Imlay furnished it for Mr. Rowley to have some tops made from. There were 3 presses, each with 2 sets of moulds, for making glass caps similar to that on Exhibit No. 2, made for Mr. Rowley by Homer Brook, of New York, in the spring of 1866. These presses and moulds are at Mr. Rowley's glass-works, Gaul and Adams streets, Philadelphia.

(That part of answer referring to C. G. Imlay objected to as not responsive and incompetent.)

22. Cross Q. Do you know where that first one referred to in your last answer is?

A. I do not.

23. Cross Q. Can you swear that you ever saw it?

A. I cannot.

24. Cross Q. How, if at all, did the tops made from the first moulds which you saw differ from the tops now on Exhibit No. 2 Hero jar; and were such moulds the moulds you refer to as having been made by Homer Brook?

A. The moulds I first saw for producing glass stoppers for Hero jars were made by Homer Brook, of New York, and I think the glass stopper on Exhibit 2 was made in one of those moulds.

25. Cross Q. Can you state when Homer Brook made and delivered those moulds which you first saw?

A. In 1866. I think in the spring; I should say in April. The order was given for the presses and moulds to him early in March, 1866.

26. Cross Q. Can you produce one of the covers which was made in any mould that Mr. Rowley had previous to the Brook moulds for pressing covers to the Hero jars?

A. I can produce a glass cover made in the mould furnished by Charles G. Imlay, which I have in my possession, and have had since the spring of 1866. This is one which I now produce in two pieces, marked "Defendant's Exhibit 8."

27. Cross Q. How do you know that this cover was made in Mr. Imlay's mould if you never saw that mould?

A. Because Mr. Imlay brought that stopper to Mr. Rowley's store, North 5th street.

177 28. Cross Q. Where has this cover been since the spring of 1866?

A. It has been among my effects in Mr. Rowley's different offices, under lock and key. I have always made it a practice to save one or more of the stoppers and jars produced, and this was one of those thus laid away.

29. Cross Q. Do you know this Exhibit No. 8 to be the first, or among the first, covers produced by Mr. Imlay in his mould?

A. I know it to be among the fisrt I ever saw.

30. Cross Q. When, are you willing to swear, you first saw this cover Exhibit 8?

A. I think about March 8, 1866.

31. Cross Q. Who did you first see it with?

A. Charles G. Imlay, at 16 and 18 North Fifth street, Philadelphia.

32. Cross Q. Where is Charles G. Imlay now?

A. I do not know. I think he lives in Philadelphia, but do not know where he resides.

33. Cross Q. When did you see him last; and have you any reason to believe that he is not living?

A. I saw him on Library street, Philadelphia, yesterday p. m.

34. Cross Q. Did any one else make moulds for glass tops for Mr. Rowley in the year 1866?

A. I think not.

35. Cross Q. Can you swear that no one did, other than Homer Brook?

A. I can't.

36. Cross Q. Did Homer Brook make any more in that year?

A. Yes; he made other moulds to fit the presses I have referred to, (in the year 1866.) I should think five or six moulds for each press were made altogether in 1866.

37. Cross Q. Did he make any in 1867?

A. I do not think he made any more until the spring of 1868?

38. Cross Q. Can you tell how many jars with metal tops Mr. Rowley made and sold prior to 1868?

(Objected to as already answered.)

178 A. I have answered before; several thousand gross.

39. Cross Q. Can you not state the number with more definiteness?

A. I think Mr. Rowley sold, to January 1, 1868, about 3,500 gross metal-top jars complete.

40. Cross Q. How many glass tops did he sell prior to January, 1868, of the Hero style of overlapping covers?

A. I should think from 250 to 400 gross. I think there were about 400 gross of glass stoppers furnished prior to January, 1868, by the various manufacturers.

41. Cross Q. Have you given these two last answers from actual figures, or estimates made from your memory?

A. From neither; from an estimate from the books, without adding up actually.

42. Cross Q. You refer, in your answer to 12 interrogatory, to some agreement and license between Mr. Rowley and Mr. Imlay. Will you produce them?

(Objected to, as it does not appear that the documents inquired for are or should be in possession of the witness.)

A. I cannot produce them, as they are in Mr. Rowley's possession, I suppose.

43. Cross Q. Did Mr. Imlay bring in this cover, Exhibit 8, at the time

he first came into Mr. Rowley's store, in the beginning of the year 1866?

(Objected to, generally and specially.)

A. I don't know. I could not swear to this particular cover having been there before March 8, 1866.

44. Cross Q. Did Mr. Imlay bring in only this one at that time?

A. He brought in several glass stoppers, like Exhibit 8, on March 8, 1866, and some sample jars—some 2 or 3—with the glass stoppers on them.

45. Cross Q. Where are those jars with the stoppers on them that he then brought in?

179 A. One of them was an exhibit in a case in New York, Rowley vs. Gibney & Goble, in the circuit court, U. S. These exhibits were lent by counsel at New York and can't be found. The other samples, I think, were given to dealers to whom Mr. Rowley sold similar jars.

46. Cross Q. Were the tops of those jars of a similar shape, size, and kind as the top defendant's Exhibit No. 8?

A. Yes, sir; they were.

47. Cross Q. Why did you not keep as well one of the jars, in view of your practice of keeping them, as samples?

A. I did, and produced it as an exhibit in the New York case when called upon.

48. Cross Q. Where is the jar to which Exhibit 8 belongs?

A. It never belonged to any that I know of.

49. Cross Q. Were you a witness in the New York case referred to?

A. I think not.

50. Cross Q. What has become of the 2-quarts jar and covers Mr. Imlay brought into Mr. Rowley, in February, 1866?

A. I don't think he left it there; but I think Mr. Rowley has one like it in his possession.

51. Cross Q. Then Mr. Imlay must have had 2 sets of moulds for these jars and covers if he had 2 sizes of jars and covers. Is that not so?

A. He must have had 2 sets of moulds for the jars; the glass stoppers were the same size for both sizes of jars.

52. Cross Q. Did you ever see any of Imlay's moulds?

A. I saw a mould he brought to 16 and 18 N. Fifth street to produce a quart Hero jar, which was sent by Mr. Rowley to Christie & Sons, of this city, to have some sample jars made from.

53. Cross Q. Was this the mould which you say was altered from the Otterson jars?

A. This was not that mould; that was a half-gallon mould; this was a quart.

54. Cross Q. Did you ever see such a mould so altered of Mr. Imlay's?

A. I don't think I ever did.

180 55. Cross Q. What reason had you for saying, then, that there was ever such an altered mould in existence?

A. I explained at the time I spoke of that mould why I thought it was altered; it produced the ½-gallon jar with lugs on opposite sides similar to the lugs on the old Otterson jar, which received the ends of the iron clamp which went over the top of the glass stopper; the thread, I thought, was cut in the mould over the notches which formed the lug.

56. Cross Q. When did Mr. Rowley get the ½-gallon jar which you say you think he now has, and which you say is similar to the one Mr. Imlay first brought into his place in 1866?

A. I think in March, 1866.

57. Cross Q. Will you please produce it on Monday next if you learn that he has it still?

(Objected to, as it does not appear that it is or should be in the power of the witness to comply with the counsel's request.)

A. I don't know how I can produce it, as it does not belong to me.

58. Cross Q. Can you tell from the books, without having to estimate or guess at it, what number of Hero jars were sold in the year 1867 containing glass covers or tops, and the number sold within the same year containing metal covers or tops?

A. No; I cannot.

59. Cross Q. Will not the books which you have kept for Mr. Rowley give you this information?

A. No.

60. Cross Q. Please state why you did not distinguish between the jars sold in 1867.

A. In 1866 I designated the orders that I entered in the book as to whether they were glass or metal tops, but the orders entered that year by Mr. Rowley were not so designated; that being the case, I did not think it worth while to keep up the designation, especially as a great many of the orders for 1867 were entered in the books by Mr.
181 Rowley and by his agent, Mr. A. A. Swope, neither of whom designated whether they were glass or metal.

61. Cross Q. On defendant's Exhibit 5 is the entry: "Cr. by mdze., 407 gro. glass stoppers, C-2, $815.44." Does not that refer to glass stoppers charged in this bill, but returned back to the Riverside Glass Co.?

(Objected to as already answered.)

A. I answered that before; they were charged up as bottles and glass stoppers; we used a great many of the bottles with metal stoppers, and did not require them to furnish the glass stoppers.

Adjourned till Monday at 12 m.

182 MONDAY, 29*th Sept.*, 1873.

Mr. Howson for respondents; Mr. Todd for complainants.

WILLIAM A. LEAVITT continues:

62. Cross Q. Since they were charged up were they not delivered?

(Objected to as already answered.)

A. They were not.

63. Cross Q. Why were the jars delivered and not the glass stoppers?

(Objection continued.)

A. I believe a good many of the jars had metal stoppers, and we did not require them to furnish the glass stoppers.

64. Cross Q. Do you mean that jars were delivered, and that before the glass stoppers were delivered they were countermanded after the receipt of the jars; if not, what do you mean in this respect?

A. The contract was made with the Riverside Glass-Works to furnish 1,000 gross Hero fruit-jars and glass stoppers at a fixed price for each size of jar manufactured by them. No price was fixed for glass stoppers separate. That being the case, at the time they were asked to furnish the jars without stoppers nothing was said as to what the difference in price for those so furnished should be. This being left an open matter, all the jars furnished by them were billed at the prices first agreed upon; and when the time for settlement came, they deducted the number of stoppers not furnished from their bill, at the rate of
183 two dollars per gross, which was not satisfactory to Mr. Rowley, and they afterward allowed at the rate of three dollars per gross.

65. Cross Q. Were the glass stoppers that were furnished at the same time with an equal number of fruit-jars?

A. They were. Most of the jars were fitted up before they left the factory.

66. Cross Q. How, then, came Mr. Rowley to take tin tops for the remaining jars, if he could get the glass tops as fast as the jars?

(Objected to as assuming what the witness has not stated.)

A. Mr. Rowley had Hero moulds that would produce more grosses of jars per pay than his presses would stoppers. The metal-top jars, being sold two dollars per gross less, were in great demand, and he had them made that way to supply that demand.

67. Cross Q. Then they did not make the glass stoppers fast enough is the reason why Mr. Rowley furnished tin tops to the jars. Is not this what you mean?

A. No; that is not what I mean.

68. Cross Q. When you say that Mr. Rowley got more jars from his moulds than he did stoppers from his presses, are we not to conclude that you mean he supplied the extra jars with tin instead of glass tops? Is not this what you mean by the Cross Q. 66?

A. The jars were sold by sample; the agents carried samples with both metal and glass covers, and took orders for both. Mr. Rowley had moulds made enough to supply an equal number that his presses for glass stoppers would supply. He also had moulds made in addition enough to supply them that were ordered with metal covers.

69. Cross Q. What I understand you to say is, that those jars billed in Exhibit No. 5 were contracted to be for glass covers, and charged accordingly. Is not this so?

A. It is. The Hero jar was originally made with a glass cover, and at the time the contract was first spoken of no metal-top Heros
184 were made. The metal top to the Hero jar was an invention of Mr. Rowley's, made shortly after he saw the Hero glass-top jar, but was not contracted for separate, because it was doubtful whether the jar would take in the market.

70. Cross Q. Are you positive that the jars of Exhibit No. 5 were made out of the moulds corresponding to an equal number of presses to the covers, or in addition, obtained out of the extra Hero jar moulds referred to by you? Have you any actual knowledge on this point?

A. I don't know whether they used them all or not, but they used part of them.

71. Cross Q. Was there not some difficulty found with the glass stoppers furnished as respects their making a perfectly tight joint? Were there not complaints respecting this matter?

A. There was some difficulty in respect to some of the tops made not being perfect, but no more than would be at the present time with glass stoppers made by parties who had not had any more experience than they had.

72. Cross Q. When did Mr. Rowley cease to sell the Excelsior jar, like defendant's exhibit No. 1?

A. I think the last of them were sold in 1868 that we had; it might have been in 1869, but I think it was in 1868. I think he didn't manufacture any directly after 1866.

73. Cross Q. Did he sell them during the years 1866 and 1867?

A. I think he did.

74. Cross Q. Can you tell from the books how many he sold during those years?

A. I think so; I never looked into it.

75. Cross Q. How are they distinguished on the day-book during those years when sold?

A By the word "Excelsior" or the letters "Excl."

76. Cross Q. Is this so in all cases of sales of the Excelsior jars?

A. It is when I made the entries.

77. Cross Q. Is it so stated when Hero jars were sold, namely, the word "Hero," in the sale?

A. Sometimes it is, and sometimes it ain't.

78. Cross Q. Then the fact is it was not uniformly stated—the name of the jar containing the glass top—in the day-book when sold?

185 A. So far as the Excelsior jar was concerned, it was designated; as far as the Hero jar is concerned, it oftentimes was not, for the reason that the Hero was the leading jar, and we knew when the orders were entered, without designating the kind, that it meant the Hero jars.

79. Cross Q. How was the joint made in the Gem jar? What kind of a cover had it?

(Objected to as not cross-examination, but introducing new matter.)

A. Made on the shoulder, below the neck, by an overlapping glass cap.

80. Cross Q. Was the name Gem stated on the day-book or not when they were sold?

(Objection continued.)

A. I think it was.

81. Cross Q. Don't you know whether it was or not?

(Objection continued.)

A. I do. Where I made the entries it was for the reason that it distinguished that jar from the Hero, which became necessary after Mr. Rowley made more than one kind of jar.

82. Cross Q. In some places I find in the day-book the entry so many gross qts. glass, and in other places so many gross qts. metal, and again, in other places, so many gross qts. Hero jars. Was there any uniform practice observed in the entry of jars sold, in distinguishing them as metal or glass tops Heros?

A. Have already answered that; that sometimes they were distinguished and sometimes they were not.

83. Cross Q. Then, would the entry "Hero jars" designate glass tops or metal tops?

A. It might designate either or both.

84. Cross Q. When was any change made in the form of the glass overlapping cover other than is shown in the exhibits?

186 A. In the summer of 1868.

85. Cross Q. Who made the moulds for that new form of overlapping cover?

A. Homer Brook.

86. Cross Q. When were the first jars put in market with that new form of overlapping cover, made in those moulds?

A. I think in January or February, 1869, were put on the market.

87. Cross Q. Will you produce one of these covers here in evidence?

(Objected to as not cross-examination.)

A. Yes.

88. Cross Q. Please do so.

A. I will.

89. Cross Q. How many jars containing tin tops like Exhibit No. 3 did Mr. Rowley sell in the year 1866?

A. About 600 gross, I should say.

90. Cross Q. Same question as to year 1867.

A. Between 2,500 and 3,000 gross.

91. Cross Q. What was done with the stoppers received according to Ireland's bill, defendant's exhibit No. 4?

A. Some were used for samples and some were sold.

92. Cross Q. To whom were any of these stoppers sold?

A. I think about 6 dozen went to Graham & Moore, Norfolk, Va.

93. Cross Q. Where is the entry for that six dozen?

A. On page 53 of day-book, Exhibit No. 6, as follows: "5 7-12 of Hero jars, 5-1, 250—$13.26."

94. Cross Q. What is there about that entry that shows whether it is glass rather than metal tops? In other words, may it not have been one as well as the other?

A. There is nothing in the entry; but I remember shipping them glass-top Hero jars at that time, and I also put in a few metal tops as samples.

187 95. Cross Q. Do you recollect other parties who got any of these glass stoppers?

A. I do not.

96. Cross Q. Did you know whether Mr. Imlay sold any jars with glass overlapping covers substantially the same as defendant's Exhibit No. 2?

A. I do not.

97. Cross Q. Are you not yourself interested in the sale of fruit-jars with glass covers?

A. I am not.

98. Cross Q. Have you not been so? If so, when, and in what jars, and how long?

A. I have not.

99. Cross Q. Have you not been so in jars with metal tops; and, if , what jar, and during what time?

A. It was the "All Right" jar, which had a metal top, with a wire bale over the top for fastening it. During the year 1868.

100. Cross Q. Can you tell from Mr. Rowley's day-book the number of Hero jars containing glass tops and metal tops respectively that was sold during the years 1867, 1868, and 1869, respectively?

A. I cannot.

101. Cross Q. How many glass stoppers did Mr. Rowley receive from Mr. Imlay in the month of March, 1866?

A. Some dozens; it might have been two or three gross, but I think a few dozen.

102. Cross Q. Is there no book-entry that can determine the fact definitely?

A. Not to my knowledge.

103. Cross Q. Was it a gift or matter of sale, the transfer of these covers, or do you know?

A. I don't know.

104. Cross Q. Cross-question No. 100 repeated as to the year 1866?

A. I cannot.

W. A. LEAVITT.

Sworn and subscribed before me this 29th day of September, A. D. 1873.

W. GRIER HIBLER,
U. S. Commissioner and Special Examiner.

188 SALMON B. ROWLEY, being duly sworn according to law, says:

1. Q. What is your name, age, residence, and occupation?

A. Salmon B. Rowley; age, 46; 1538 North Broad street, Philadelphia; glass-manufacturer.

2. Q. If you know Mr. Charles G. Imlay, of this city, and have at any time had any business transactions with him, please state as near as you can the time and the nature of the first of such business transactions.

A. I do know Charles G. Imlay. The first business transaction that I had with him was in winter or spring of 1866; think when he first came was in the winter. He came to my office, 16 and 18 N. Fifth street, with a Hero jar. I was in the lamp and jar business at that time.

3. Q. Please describe the Hero jar which you say Mr. Imlay brought to you, as you say, in the winter of 1866, and state what purpose he brought it to you for.

A. It was a jar having a shoulder below the mouth, screw-threads below the shoulder, having a glass stopper overlapping the mouth of the jar resting on the shoulder, and a thin metal screw-ring; named the Hero, the word Hero blown in the glass. He brought the jar to me for the purpose of my taking hold of it to manufacture it.

4. Q. Did you or not take hold of and manufacture it; and, if yea, when?

A. I did. The contract and license, I think, was dated March 7, 1866.

5. Q. Please refer to documents now placed before you, and state what, if anything, you know about them.

A. This is the license of C. G. Imlay to S. B. Rowley, (license put in evidence, marked "Defendant's Exhibit No. 10;") this the article of agreement, marked "Defendant's Exhibit No. 11."

189 (It is consented that copies duly certified by the special examiner may be substituted for the originals.)

6. Q. Describe, if you can, from memory, the Hero jar which you say Mr. Imlay first brought to you in the winter of 1866, with special reference to size and kind of glass of which the jars were made.

A. It was a half-gallon jar, made of white glass; had a green glass stopper; a jar that I think had been made in an altered mould, because there were two lugs on the opposite sides below the threads of the jar.

7. Q. Please state what jars, if any, you manufactured between the 7th day of March, 1866, and January, 1868.

A. Should think we made the Excelsior and Hero jar.

8. Q. Were there or not more than one style of Hero jar made and sold during that period; and, if yea, what were the differences between the several styles?

A. There were two styles of the Hero jar made and sold during that period; one had a glass top and one a metal top.

9. Q. Please look at Exhibit No. 2, and please state how, if at all, that exhibit differs from the glass-covered Hero jars made and sold by you between the dates mentioned.

A. This is the kind of glass-top Hero jar that I made and sold.

10. Q. Please look at the jar now placed before you, and say what, if anything, you know about it.

(Jar offered in evidence, marked "Exhibit No. 12.")

A. This is the jar that Mr. C. G. Imlay brought to me when he first called on me, in the winter of 1866.

11. Q. How, if at all, was the cover secured to the jar as Mr. Imlay brought it to you?

A. It was secured by a thin metal screw-ring.

12. Q. Please look at the glass cover, Exhibit No. 8, and state, if anything, what you know about that.

190 A. This is a glass cover, made in one of C. G. Imlay's glass-cover moulds.

13. Q. Have you at any time seen similar covers? State where and about when, and who, if any one, showed them to you.

A. I had some covers made like this myself by Mr. Ireland; I bought some of Mr. Imlay of the same kind.

14. Q. Please look at the bill I now show to you, and say what, if anything, you know about it.

A. This bill is a bill of Hero jars ordered by Mr. Imlay for me and paid for by me.

(Bill offered in evidence, and marked "Exhibit No. 13.")

15. Q. Did you or not, during the year 1866, advertise the glass-covered Hero jars; and, if yea, in what method or methods?

A. I did; I got lithograph-cuts of the Hero glass-covered jar and sent them off in different parts of the country.

16. Q. Please look at the bill now placed before you, and say what, if anything, you know about it.

A. This bill is dated May 30, 1866, for printing and engraving 500 fruit-jar cards for the glass-top Hero fruit-jars.

(Bill put in evidence, marked "Defendant's Exhibit No. 14.")

17. Q. Under what right did you manufacture and sell, as you have stated, jars like Exhibit No. 2?

A. On the license now in evidence.

Cross-examined by Mr. A. J. Todd:

18. Cross Q. When did you first make the acquaintance of Mr. Charles G. Imlay?

A. In 1865, or may have been in latter part of 1864.

19. Cross Q. Why do you think it was the latter part of 1864?

A. I commenced making Excelsior jars in 1864.

191 20. Cross Q. Was that the way you first became acquainted with him?

A. I think it was.

21. Cross Q. Did you have any agreement with Mr. Imlay for making Excelsior jars?

(Objected to as not cross-examination.)

A. I did not.

22. Cross Q. Did you commence making the Excelsior jar by reason of becoming acquainted with Mr. Charles G. Imlay?

A. I did not.

23. Cross Q. How did you come to be engaged in the manufacture and sale of the Excelsior jar?

(Objections continued.)

A. Through Mr. Thomas Houghton.

24. Cross Q. Did you have an agreement with Mr. Thomas Houghton in this respect?

(Objection repeated.)

A. I did.

25. Cross Q. Will you produce that agreement?

(Objected to.)

A. I cannot.

26. Cross Q. Why not?

(Objection repeated.)

A. It is not in my possession.

27. Cross Q. Is that the paper which is recited in defendant's Exhibit No. 11 as being annexed thereto by copy?

(Objection repeated.)

192 A. It is.

28. Cross Q. Where is that copy, since it does not appear to be attached to defendant's Exhibit No. 11?

A. I never saw any copy.

29. Cross Q. Where is the original, if it is not in your possession as you state?

A. The last I saw of it it was in the hands of Mr. Imlay; I gave it up to him when I took the license from him.

30. Cross Q. What right was that so received from Mr. Houghton, and under what patent or patents was it granted?

(Objected to.)

A. Under no patent, but under an application for a patent.

31. Cross Q. Were you making Excelsior jars under that agreement with Mr. Houghton up to the time you made the agreement with Mr. Imlay?

(Objected to.)

A. I was.

32. Cross Q. Did Mr. Imlay claim that it was an infringement of his patent?

(Objected to.)

A. He did.

33. Cross Q. Of what patent?

(Objected to.)

A. His patent of 1864.

34. Cross Q. Had Mr. Imlay been making these Excelsior jars up to this time, to your knowledge?

(Objected to.)

A. He had been making jars under his patents; the word Excelsior was a trade-mark of my own.

193 35. Cross Q. What did he call such jars as he made up to that time?

(Objection continued.)

A. I don't now just remember the names of his jars; I think he made two jars; the names I don't exactly remember at this time.

36. Cross Q. Did he continue to make or sell jars, after entering into the agreement with you, defendant's Exhibit No. 11?

A. He did not continue to make Hero jars, but sold off the stock which he had on hand of Hero and other kinds of jars.

37. Cross Q. Did he make and sell Hero jars before entering into said agreement with you?

A. He did.

38. Cross Q. For how long before that time did he continue to make and sell such jars?

A. I think he must have made them the summer before—the summer of 1865, as near as I can find out.

39. Cross Q. Then you don't know of your own knowledge?

A. I had two jars of fruit that winter which were put up the summer before.

40. Cross Q. How were the covers of those jars held in place, and where were the joints made?

A. Held in place by a thin metal screw-ring; joint was made on a shoulder below the mouth of the jar.

41. Cross Q. Had those jars projections on the neck like defendant's Exhibit 12, and were they the same size of jars as said exhibit?

A. Had no projection on, and not the same size; were one-quart jars.

42. Cross Q. Where are these jars now?

A. I don't know where they are; one was full of cherries and was taken to New York to be used in the Gibney & Goble case; I don't know whether it was used or not.

43. Cross Q. Is defendant's Exhibit 12 just as it was when it was handed to you by Mr. Imlay?

(Objected to as already answered.)

194 A. It had a thin metal screw-ring, the one handed to me.

44. Cross Q. Where is that thin metal screw-ring?

A. It either got lost or mislaid.

45. Cross Q. When did you see it last?

A. I think about a year ago, at my office.

46. Cross Q. When did you see Mr. Imlay last?

A. One day last week.

47. Cross Q. Did you talk with him about being a witness in this case?

A. I think I did.

48. Cross Q. Where did you meet him, or did you go to see him?

A. I went to see him.

49. Cross Q. Did he promise to come?

A. He will come if I want him.

50. Cross Q. Did he say that he would come?

A. I can't exactly say what was said about it.

Adjourned until to-morrow (Tuesday) at 10 o'clock.

195 TUESDAY, *September 30th*, 1873.

Present: Mr. Howson, for respondent; Mr. Todd, for complainant.

51. Cross Q. How many jars containing lug and screw ring, like defendant's Exhibit No. 12, did you see in all?

A. I don't remember of ever seeing any but that one.

52. Cross Q. Can you fix definitely the time you came into possession of the two jars of fruit you refer to in your answer to cross-question 39?

A. It was in the last of the winter or early in the spring of 1866.

53. Cross Q. Had they the mark "Hero" in the body of the jar like defendant's Exhibit No. 12?

A. They had.

54. Q. Since you were examined in the Rowley vs. Gibbon & Goble case, pending in the city of New York in the last few years, can you not state positively whether or not one or both of those jars that had fruit in them were introduced in it as exhibits in said case?

A. I cannot.

55. Cross Q. Who did you buy those two jars of fruit of?

A. I got them of Thomas G. Otterson, of Millville, N. J.

56. Cross Q. Do you know who made the mould or moulds of Mr. Imlay's Hero jars, or who altered the mould of the jar, defendant's Exhibit No. 12, which he brought to you in the early part of the year 1866?

A. I do not know from my own knowledge.

57. Cross Q. Who made your first moulds for pressing glass overlapping caps?

A. Homer Brook, of New York.

58. Cross Q. Can you state definitely when such moulds were delivered to you?

196 A. The order was given to make them early in March; can't say positively whether delivered in April or May.

59. Cross Q. Was it for the pressing of such a cap as is shown on defendant's Exhibit No. 2?

A. Cap shown in Exhibit No. 2 was pressed in one of those moulds.

60. Cross Q. Did Homer Brook furnish the first moulds for the pressing of the caps similar to Exhibit No. 9?

(Objected to as not cross-examination.)

A. Yes; he furnished the moulds for pressing the caps similar to Exhibit No. 9.

61. Cross Q. Has not the overlapping caps of jars, defendant's Exhibit No 12, got the depression on the upper side in the centre, for receiving the screw, of the bail Otterson jar?

A. It has a depression in the centre similar to the one in the Otterson jar.

62. Cross Q. How was the joint made on the jar, which was referred to in the agreement which you had with Thomas Houghton, of this city, which agreement was surrendered to Mr. Imlay, as appears by defendant's Exhibit No. 11?

(Objected to as not cross-examination.)

A. The joint was made on the top of the mouth of the jar.

63. Cross Q. Did Mr. Imlay ever make any application for patent on the jar which you say he brought you in the winter or spring of 1866, having the joint made on the shoulder below the top and outside of the mouth?

(Objected to as not cross-examination, and also as not seeking the best evidence inquired about.)

A. I don't know that he ever made an application.

64. Cross Q. Did you pay Mr. Imlay royalty under this agreement, defendant's Exhibit No. 11?

(Objected to as immaterial.)

197 A. I did.

65. Cross Q. For how long a time?

(Objection continued.)

A. The royalty and purchase of the rights of Mr. Imlay, for that jar, was made in 1867; the part payment on royalty was made in taking my old Excelsior moulds, and the balance of the royalty was included in the purchase-money.

66. Cross Q. Have you the paper of settlement?

A. I have.

67. Cross Q. Will you produce it?

(Objected to.)

A. I will if I can find it.

68. Cross Q. Did Mr. Imlay use those Excelsior moulds from the time of their delivery to him, making and selling jars therefrom?

(Objected to as not cross-examination, and as immaterial.)

A. Not that I know of.

69. Cross Q. Do you know that he did not?

(Objection continued.)

A. I do not know that he did not, but I think he didn't.

70. Cross Q. Who furnished you with the Excelsior jars after the moulds got into possession of Mr. Imlay?

A. I bought no Excelsior jars after I sold my moulds out; I had a stock on hand.

71. Cross Q. Why do you think Mr. Imlay did not make, or cause to be made, jars from the moulds which you sold to him?

(Objection continued.)

198 A. I understood that Mr. Imlay turned over these moulds to Mr. Houghton, with the agreement I gave him.

72. Cross Q. And did not Mr. Thomas Houghton then run said moulds in the manufacture of the Excelsior jars for the market?

(Objection continued.)

A. He did.

73. Cross Q. Are not the following entries the sales of jar-moulds to Mr. Imlay—book Exhibit 6, page 26, 1866:

March 16, 3 one-quart Excel. jar-moulds, $54.50		163 50
And on page 34, March 22:		
2 two quart flint-glass Excel. jar-moulds	$104 00	
1 half-gal. "	54 50	
		158 50

Also, two other entries of moulds sold, on bottom of pages 18 and 20, including ten moulds in all, three of which are stopper-moulds?

(Objection continued.)

A. I should say they was.

74. Cross Q. Did you ever purchase or receive any jar-moulds from Mr. Imlay?

A. No, sir; not to my knowledge.

75. Cross Q. Can you produce any of the lithograph cuts of the Hero glass jar which you say you paid for in bill defendant's Exhibit No. 14?

A. I cannot.

76. Cross Q. If you paid the bill, defendant's Exhibit No. 13, and was ordered for you by Mr. Imlay, how does that bill appear to be made out in Mr. Imlay's name?

A. Mr. Imlay owned the moulds, and I had him order the jars made for me.

159 77. Cross Q. Was not the Hero jar, manufactured by you, known and referred to as a metal-top jar?

A. It was not.

78. Cross Q. I find the entries in the day-book Exhibit 6, prior to July 1, 1866, refers to the Hero jar as a metal-top jar, excepting the entry, June 5, on page 85, of sale to Rider and Hisey, of half-gross of half-gal. Hero jars, and two-thirds of a gross of quart Hero jars, on which said last-named entry is a deduction of $6.15 for a half gross of jars and stoppers, and the Graham and Moore entry referred to by the witness Leavitt. Now, do not all these entries refer to metal-top jars, and do you find, anywhere, it stated either Hero jars with glass tops, or the word Hero alone, except as above stated, in the fore part of that year?

(Objected to as assuming, as not cross-examination, and because it does not appear that any of the entries referred to were made by witness.)

A. I should say those having metal tops are Hero metal-top jars; I should say they did, where it mentions metal tops; as I understand the Rider and Hisey entry, it refers to half glass tops and half metal tops. I do not find the word Hero in connection with glass tops, or the word Hero alone, within that period, except as above stated in the question.

79. Cross Q. Please look at the pamphlet shown you, and now marked "Exhibit 15," and state if it does not refer—if it is not a pamphlet published by you as early as the year 1869.

(Objected to as not cross-examination, and proffer of exhibit objected to.)

A. It is.

80. Cross Q. Did you not sell to the defendant in this case the jars which it is alleged is an infringement of the patent owned by the complainants, and upon which this suit is founded?

A. I did.

200 81. Cross Q. Will you please look for and produce the copy of the Houghton agreement, which should accompany defendant's Exhibit No. 11; also the agreement, or paper of settlement, made with Mr. Imlay in the year 1867, as you have testified?

A. I will produce them, if I can find them.

82. Cross Q. Are you not paying expenses of this suit on the part of the defendant?

A. I am.

Redirect:

83. Re-D. Q. Referring to cross-question 63 and your answer thereto, have you or not any further explanation to make on that subject?

A. I have. Mr. Imlay did apply for a patent. I can't say exactly when; I am not certain whether it was before or after he came to see me, but think it was after.

84. Re-D. Q. Referring to cross-question 78 and your answer thereto, what, if any, reason can you give for the use of the words "metal top" in the entries to which the question has reference?

(Objected to as incompetent and improper.)

A. Metal top has reference to the Hero jars.

85. Re-D. Q. What reason, if any, are you aware why said entries, instead of containing simply the word Hero, contained also the words metal top?

(Objection continued.)

A. I had no other metal-top jars but the Hero.

86. Re-D. Q. That being the case, what, if any, reason do you know for using in said entries both the word Hero and also the explanatory words metal tops?

(Objection continued.)

201 A. I would here say that all the Hero jars sold were sold with glass tops; orders were taken for them with glass tops, and during the delay in getting my glass-stopper moulds made, I made some tin tops and shipped out to my customers, writing them I would send the glass tops in a few days. My orders for Hero jars were all with glass tops. The first order I gave out to make the Hero jars was for one thousand gross of Hero jars with glass tops.

87. Re-D. Q. I find on top of page 104 an entry which seems to have been stricken off by drawing pencil-lines across it. Please refer to and read that entry.

(Same objection.)

A. June 20, Treham & Heberling, Mauch Chunk, Penn'a, one gross glass-top Hero jars: $32.00, 20 per cent. off.

88. Re-D. Q. Please refer to the same page, and refer also to cross-interrogatory 78, and state what, if any, reason you find, on perusing the page referred to, for modifying your answer, or any part thereof, to said interrogatory?

A. I find on referring to page 104, June 20, in my own writing, three separate entries of Hero jars with the word Hero alone—V. R. Keller, Shippensburg, Pa.; W. L. Hawkins, Princeton, N. J.; Herrick and Hoff, Rahway, N. J. I also find on page 107, in my own handwriting, June 20, two entries—J. Hassell, Newark, N. J.; Leopold Bros., Baltimore, Md.

89. Re-D. Q. Refer now to the entry dated June 19, on page 103 of Exhibit 6, and containing the names of Treham & Heberling, Mauch Chunk, Pa., and state what, if any, explanation you can give of the memorandum, "Will send glass tops in a few days."

A. Owing to delay in making my moulds, the glass tops were not ready to ship.

90. Re-D. Q. Please read the three items forming the body of said entry.

A. 2 gross, quarts, metal; one gross, quarts, glass; 1 gross, half gallon.

91. Re-D. Q. To what kind of jars do these items, if you know, severally refer?

A. I should say they refer to the Hero jars.

202 92. Re-D. Q. Please refer to page 89, and state what, if any, entries you find there containing a memorandum the same as or similar to that referred to in redirect 89.

I find one on page 89, June 11, to A. Van Vranken, 162 State street, Schenectady, N. Y., an entry of jars, and the words below, "Will send the glass tops in a few days."

93. Re-D. Q. You have been asked, in course of examination, as to your conversation last week with Mr. C. G. Imlay, and have stated that you do not recollect exactly what was said; can you state what impression that conversation gave you as to the willingness of Mr. Imlay to appear as a witness on behalf of defendant in this case?

A. He gave me the impression that he was not willing.

Cross-questions resumed:

94. Cross Q. Do you find that any of the entries made by you of Hero jars, in the day-book, designate the fact of their being either of metal or glass tops?

A. I do not as far as I have looked.

S. B. ROWLEY.

Adjourned until Thursday at 9 o'clock.

203 THURSDAY, *Oct.* 2, 1873.

THOMAS G. OTTERSON, being duly sworn according to law, says:

1. Q. What is your name, residence, and occupation?

A. Thomas G. Otterson; 2323 Tulip street, Philadelphia; superintending the pressing of glass covers for fruit-jars at the present time.

2. Q. Please look at certified copy of letters-patent, granted Thomas G. Otterson, Nov. 4, 1862, No. 36853, for improved fruit-jar, and state whether or not you are the inventor and patentee named therein.

A. I am the inventor and patentee of the fruit-jar therein described. (Certified copy offered in evidence; defendant's Exhibit No. 16.)

3. Q. If at any time you had any moulds made for the manufacture of jars under your said patent, state when, by whom, and about when such moulds were first made.

A. I had moulds made for the manufacture of the jars under the said patent of Nov. 4, 1862, in Philadelphia, in the spring of 1863, by Mr. John Wiedig.

4. Q. What provision was made in the said moulds for forming the shoulder on the jar below the mouth, and which is marked with the letter B in the drawing of patent?

A. An annular groove which the glass was blown into, and form a flange which was nearly flat on the upper side.

5. Q. Were any jars produced from those moulds?

A. There was jars produced from those moulds in the spring and summer of 1863, at Millville, N. J., by Thomas G. Otterson and others.

204 6. Q. Please examine defendant's Exhibit No. 12, with spe-

cial reference to the shoulder below the mouth, and state in what, if in any material respects, the shoulder in that exhibit differs from that on the jar which you say was produced in the spring or summer of 1863 from your moulds.

(Objected to as incompetent and immaterial.)

A. I find on examination no material difference in this exhibit and that produced from my moulds.

7. Q. When and where did you first see a screw-ring like, or anything like that on defendant's Exhibit No. 1?

A. I first saw a screw-ring like that upon Exhibit 1, at Wiedig & Yoekel' mould shops, No. 309 North Front street, Philadelphia, in the latter part of February or the first part of March, 1865.

8. Q. How came you to see it there at that time, and what, if anything, and to whom, if anybody, did you speak in reference thereto at that time?

A. I was at Wiedig & Yoekel's shop, having some work done on the moulds of patent Nov. 4, 1862, at which time I saw a screw-ring similar to this on Exhibit 1, and inquired to whom it belonged and where they lived.

9. Q. What, if any, special object had you in making that inquiry, and what, if any, answer did you receive thereto?

A. My object was to fix that screw-ring upon my jar patented November 4, 1862, or to combine it in the best way we could. I received an answer that it belonged to the American Fruit-Jar Company, of which company Mr. C. G. Imlay, of 327 Pine street, Philadelphia, was the business man.

10. Q. If you know the Mr. C. G. Imlay referred to in your last answer, state when, as nearly as you can, and where and how you became acquainted with him.

A. I became acquainted with him by letter, in the spring of 1865, in Philadelphia.

11. Q. After that time had you or not any business transactions with Mr. Imlay; and if yea, what was its nature?

205 A. I had business transactions with Mr. C. G. Imlay after that time; its nature was to form a combination of his screw-ring patent and my patent of 1862, either by assigning one-half of patents each to the other, or he to take my patent under an exclusive license.

12. Q. If that business occasioned a correspondence beween Mr. Imlay and yourself, and you have any of the letters in your possession, will you please produce those letters?

(Objected to as incompetent and immaterial.)

Witness produces letters 7, and envelopes.

13. Q. State, if you know, in whose handwriting the letters and the addresses on the envelopes are.

(Same objection.)

A. In the handwriting of Mr. C. G. Imlay.

(Counsel for respondent offers letters and envelopes produced by witness in evidence, marked on the envelopes "Defendant's exhibit' 17, 18, 19, 20, 21, 22, and 23, inclusive."

Same objections to reception of exhibits in evidence, and also because the whole correspondence is not produced.)

14. Q. I notice in letter Exhibit 17, dated July 6, 1865, the following words: "Both the ½-gallon and quart mould will go down to-day;" also in the margin of the 2nd page the words: "William has already taken a plaster cast of the neck of the ½-gallon mould, and will have caps or

rings ready by the time samples come up." Please state what, if anything, you know as to the matter to which these words refer.

(Same objection continued.)

206 A. The words quart and ½-gallon moulds refers to moulds I had made in the spring of 1863, that had been altered by turning out the annular groove at the bottom and the incline at the bottom of the said groove, and placing on the neck instead thereof a screw-thread on which to run or turn a screw-ring for the purpose of pressing or locking down upon rubber packing a glass cover, lid, or cap. The cast of the neck was taken for the purpose of ascertaining the size to make the screw-ring for the above-stated purpose. The cap was to be pressed upon rubber packing like shoulder in Exhibit 12.

15. Q. In letter Exhibit 18, dated July 13, 1865, I read the following: "We were glad to receive your samples, but there is the slightest difficulty somewhere about the joint which prevents them from working; it is therefore necessary to have moulds here immediately for alteration." State, if you know, to what the words "your samples" refer.

(Same objections.)

A. The words refer to samples blown by myself, or caused to be blown by me, in the moulds referred to as having been altered.

16. Q. In letter Exhibit 19, dated August 3, 1865, are the words: "I have the promise of jar alterations this week; did you send all the stopper-mould pieces?" Also, on 2nd page, the words: "William has pretty much finished his tools for caps, and I tell you they do work sweetly on the ½-gallon jars." State, if you know, to what these words have reference.

(Same objection.)

A. The first words have reference to altering my moulds made in 1863, the pint and three-pint moulds that were then unaltered. The second words, on first page, have reference to a missing bed-piece of the stopper-mould. The words on second page had reference to tools for making screw cap or ring something similar to what is shown in Ex-

207 hibit 1, which worked so well on the ½ gallon jar blown in my mould, after being altered to a screw-thread.

17. Q. In Exhibit 20, on the 3d page, I read as follows: "William sent you a ring; it may get bent in carrying by mail; those we have, only a few samples, work beautifully." Do you now recollect whether or no you received the ring there referred to? And if yea, describe it as nearly as you can.

(Same objections.)

A. I did receive the ring referred to in Exhibit 20, on the 3d page, similar to the ring in Exhibit 1, except being larger, and would fit nicely, I think, on jar Exhibit 12.

18. Q. To what, if you recollect, does letter Exhibit 21, dated August 8, 1865, refer?

(Same objections.)

A. That refers to not receiving the pint and 3-pint moulds as they were made in 1863, and also the delay, in view of a license he was under, obligated to pay me so much per gross and so much annually, whether the jars were made or not.

19. Q. In Exhibit 22, on the 2d and 3d pages, I read as follows: "The moulds have not yet arrived, neither stopper nor jar; if, therefore, I could get them blown, I would be behindhand with the different sizes. The ½-gallon jar, with the screw and ring, works as perfectly as anything could be desired to do." Please give such explanation as you can, of your own knowledge, of these words.

(Same objections.)

A. The first words have reference again to the pint and 3-pint mould as I had them made in 1863, and yet unaltered, neither stopper nor jar. The stopper means the bed-piece of the stopper-mould that had been mislaid. The ring which he states works so perfectly is that produced from the tools he had finished to work on a screw-thread for the
208 purpose of locking down a glass cover or a rubber packing, resting upon an outside shoulder, below the mouth of the jar.

20. Q. In Exhibit 23, page 4, I read as follows: "I have named your jar the Hero, and herewith I send you a circular which tells the whole story, and hope it may meet with your approval. The engraver did not fully represent the ring and stopper, as I observe the top of the stopper does not (as it should) in the cut rise a little above the ring, but practically that is a matter of no importance." Describe, if you can, the jar here referred to as your jar and as the Hero; and if you have the circular referred to, please produce that.

(Same objections.)

A. The words on page 4, the words "your jar," means the jar as intended it should be, or as nearly so as we could get it under the circumstances when I first began to write to him in reference to my jar; and the screw-ring, that is a screw-ring working upon a thread below the shoulder, with its flanges pressing upon a recess or shoulder of a glass cover, forcing the same down upon the rubber gasket pressing upon the shoulder below the top or the mouth of the jar. This is the circular referred to.

(Circular produced and marked "Exhibit No. 24.")

21. Q. Where has this circular been since you received it?

(Same objections.)

A. It has been in my possession ever since I received it.

22. Q. How have you kept it?

(Same objections.)

A. In the letter in which it was received when sent by Mr. C. G. Imlay, and rolled or tied up in a bundle of his letters in my trunk or chest which I have.

209 23. Q. Did you retain copies of your part of the correspondence with Mr. Imlay?

(Same objections.)

A. I did not.

24. Q. Please look at the glass cover now shown you, and state, if you can, by whom it was made, and about when, for what purpose, and all you know about it.

A. It was made by myself, prior to July 15th, 1865, at the Medford Glass-Works, Medford, N. J., for the purpose of resting upon the rubber gasket, resting upon a shoulder as shown in Exhibit 12, and also to be forced down upon the rubber gasket by the screw working upon the thread of said exhibit.

(Cover offered in evidence, and marked "Exhibit No. 25.")

25. Q. I notice on the top of this cover words and letters as follows: "T. G. Otterson's patent, Nov. 4, 1862;" also in the centre of the top of the cover a slight depression. What, if any, explanation can you give, of your own knowledge, of these characteristics of the cover?

(Same objections.)

A. The words T. G. Otterson designate the inventor and patentee; November 4, 1862, the date of issuing the patent to said T. G. Otterson; the small depression in the centre of the top of the cover was for the purpose of receiving a small projection or tear on the under side of the

centre of the clamps, to work in, or for the point of the thumb-screw to turn in, in order to force the cover down upon the rubber gasket resting upon an outside shoulder below the top of the mouth, to secure an air-tight joint. This was before the shoulder or recess was put upon this cover for the purpose of the flange of the screw-ring to press upon when turned upon a thread below the shoulder.

210 26. Q. Then how, if you know, were the presses or moulds prepared, from which you made the cover, Exhibit 25?

(Same objections.)

A. The part of the mould that makes the top part of the cover when resting upon the rubber is of one piece to the bevel upon the outside of the edge, and is called the bed-piece. The part that makes the bevel on the outside of the edge and the edge is called the follower, through which the plunger slips when the glass is cut into the bed-piece, the follower coming down, holding the glass into the bed-piece; the plunger is forced into the glass, which presses the glass up into the bevel-edge of the follower, making as perfect a cover as the described form of mould will make.

27. Q. Question 26 repeated, substituting the words "from what" for the word "how."

(Same objection.)

A. This cover was made from the mould which was first prepared for patent dated November 4, 1862, and altered from that in June, 1865, to make this cover, Exhibit 25.

28. Q. By whom, if you know, were these alterations made?

(Same objections.)

A. By mould-makers of the firm of Wiedig & Yockel.

29. Q. Who, if any one, besides yourself had knowledge of or was interested in these alterations in the mould referred to, and in the production of covers such as Exhibit No. 25?

(Same objections.)

A. I suppose Charles G. Imlay had knowledge of the form of cover, but little of their production. C. G. Imlay was interested.

211 30. Q. To whom, if to any one, prior to July 15, 1865, or at that time, did you send any covers such as Exhibit 25?

(Same objections.)

A. I sent such covers as Exhibit 25 to C. G. Imlay, of Philadelphia; retained some myself.

31. Q. If at any time you have had in your possession any jar or jars employing covers such as Exhibit 25, state as nearly as you can when and how said jar or jars first came into your possession.

(Same objection.)

A. I had such jars as stated, covers as Exhibit 25, in the summer of 1865, retained by me when blown at Medford or sent to me by C. G. Imlay.

32. Q. How, if at all, were the covers secured to the said jar?

(Same objections and as leading.)

A. By a screw-ring or screw-rings.

33. Q. By whom, if by any one, were these jars, or any of them, used?

(Same objections and leading.)

A. By myself.

34. Q. State as nearly as you can when and for what purpose.

(Same objections.)

A. In the summer of 1865, and for preserving fruit, vegetables, and so forth.

35. Q. Had or had not the jars thus used by you any name on them; and, if yea, what name?

(Same objections.)

212 A. The jar or jars used by me had a name on them, and that name was the Hero.

36. Q. Please compare the jar, Exhibit 12, with your recollection of the Hero jar which you say you used in the summer of 1865, and state what, if any, differences you find.

(Same objections.)

A. I find no material difference in the jar Exhibit 12 and what I used in summer of 1865, save in the lugs shown in Exhibit 2, below the screw-thread.

Cross-examination, de bene esse, by A. J. Todd:

37. Cross Q. You say in answer direct to interrogatory 35 the jar or jars "used by me;" now, can you say whether it was more than one jar in which you put up fruit in the summer of 1865 with cover like Exhibit 25?

A. More than one.

38. Cross Q. How many more than one; did it amount to two?

A. Certainly; I can't say positively how many more.

39. Cross Q. What did you do with those jars so put up?

A. I retained them with many others that I had at that time of various kinds.

40. Cross Q. Explain what you mean with "various others that I had at that time of various kinds."

A. I mean the Whitehall jar, the Moore jar, the Otterson jar, a sample of a new jar that C. G. Imlay was prosecuting to a patent; the Ludlow jar.

41. Cross Q. What became of the jar or jars so put up with cover 25, as you state?

A. I think they were given to S. B. Rowley when at my house in 1866 or 1867; I think in May.

42. Cross Q. Why did you give them to Mr. S. B. Rowley?

A. He was at my house inquiring concerning a license between
213 C. G. Imlay and myself, and just as he was going out, and having been looking at fruit in jars, he asked me if I would give him that fruit in jars, and I did so.

43. Cross Q. Why did you do so?

A. Merely because he asked me.

44. Cross Q. Had you no other reason for doing so?

A. I had not.

45. Cross Q. Have you seen those jars since you gave them to him?

A. I think I have.

46. Cross Q. Where, how often, and when last, if more than once?

A. At 509 Market street, his office; how often and when last, I could not say.

47. Cross Q. Where did you take them from when you gave them to him?

A. I took them from a cupboard or dresser in my house.

48. Cross Q. Had they been there since you put them up?

A. They had not.

49. Cross Q. Where did you keep them previously?

A. I kept them in a small bed-room.

50. Cross Q. Why did you put them up?

A. I put them up to test them.

51. Cross Q. For what are the lugs on defendant's exhibit 12, if you know?

A. Those I used had not the lugs.

52. Cross Q. I did not ask you that. Now please answer 51, interrogatory.

A. I do not know for what particular those lugs were put on Exhibit 12.

53. Cross Q. Had the jars which you manufactured and sold under your patent November 4, 1862, those lugs?

A. They had not.

54. Cross Q. For whom are you superintending the pressing of glass covers for fruit-jars?

A. Mr. S. B. Rowley.

55. Cross Q. Since when?

A. Since about the first of January, 1869.

214 Redirect:

56. Red. Q. By whom, if by any one besides yourself, were Hero jars such as you used in the summer of 1865 also used? And with your answer give your reasons, if any you have, therefor.

(Objected to as not in redirect and as incompetent and immaterial.)

A. They were used by Mr. C. G. Imlay in the summer of 1865. The reason is because I saw them at his house, 327 Pine street, Philadelphia.

57. Recross Q. How many did you see at his house and where were they in his house?

A. Well, I saw three or more; I am not positive where in the house; I think on the mantel-piece; could not say what room.

58. Recross Q. When did you see them?

A. In July or August, 1865.

59. Recross Q. Did you see them more than once?

A. I will not state positive, but I think I did.

60. Recross Q. Do you know what became of them?

A. I do not.

61. Recross Q. Did he not put them up to test them the same as you did?

(Objected to.)

A. I think he did, preparatory to manufacturing them in large amounts, or at least with that expectation.

T. G. OTTERSON.

Sworn and subscribed before me this 2nd day of October, A. D. 1873.

W. GRIER HIBLER,
Examiner.

T.

215 1. Q. What is your name, residence, and occupation?

A. Charles Yockel. 838 North Seventh street, Philadelphia. Mould-maker, firm of Wiedig & Yockel. Was a member of the same firm in the same business in the year 1865.

2. Q. Are you acquainted, or not, with Mr. C. G. Imlay of this city, and also with Mr. Thomas G. Otterson?

A. I am acquainted with them.

3. Q. What, if any, business did your firm do for Mr. C. G. Imlay in 1865?

A. We made some alterations in a fruit-jar-cap mould, and a new plunger for the same.

4. Q. Anything else, Mr. Yockel?

A. A mould which originally belonged to Mr. Otterson, altering a half-gallon fruit-jar mould, cut screw on neck of said mould; the same operation done to three-pint moulds and quart mould. Also, cut the name The Hero on said mould.

5. Q. If you have with you any book containing an entry or entries of this work, will you please produce that book and refer to the entry or entries?

(Objected to as incompetent and immaterial.)

A. Yes, sir. I produce a book which I call a ledger, and which contains all our accounts.

6. Q. Please read the entry.

(Same objections, and as not putting in evidence the entry in the proper way.)

A. June 27th, 1865. Mr. Charles Imlay, 327 Pine street.

To altering stopper-mould and new plunger for Otterson.

216 July 6th. To altering neck of half-gallon-jar mould.

Cut screw also on quart, three-pint.

New chock for cap.

do plain.

Cut screw on quart mould.

$56.00. Lettering two moulds.

7. Q. By whom, and when, if you know, was that entry made?

(Objection continued.)

A. It was made by me at the date on the book.

8. Q. Who did the work then referred to?

(Same objections.)

A. Myself.

9. Q. What, if you recollect, was the alteration in the stopper-mould referred to in that part of the entry June 27th?

(Objection continued.)

A. It was a plain cap used for a clamp-jar, and I put a shoulder on the side of it.

10. Q. Please make a sketch showing the difference between the mould as it originally was and as it was when altered by you.

(Objection continued.)

(Witness produces sketch marked "Exhibit 26." A shows the cap as it originally was, and B shows it as altered by you.)

11. Q. Please examine cap Exhibit 25, and state what, if any, difference you find between the shape of that cap and that of the mould which was altered by you was adapted to produce.

(Same objections.)

A. I find no difference.

217 (Cap offered in evidence marked "Exhibit No. 27.")

12. Q. Please examine the cap now shown you and state if you recollect how that compares in shape with the mould before it was altered by you.

(Same objections.)

A. It looks like it before it was altered.

13. Q. What, if you recollect, was the work to which the words "new chock or cap" and "do. plain" refer, and at whose request did you do that work?

(Same objections.)

A. I had done it for Mr. Charles Imlay for William Imlay; his son's instructions chock for cap I understood was for manufacturing a screw-cap. "Do. plain" to make a plain cap.

(Book referred to by witness marked "Exhibit No. 28.")

Cross-examination, de bene esse, by Mr. A. J. Todd:

(Book is shown counsel.)

14. Cross Q. Did you not do other work for Mr. Charles Imlay than that referred to?

A. No, not direct for him.

15. Cross Q. To whom was other work for him charged?

A. To the American Fruit-Jar Company.

16. Cross Q. Are the entries in day-book or ledger form on the page referred to?

A. I call it a ledger. It is the only book I keep.

17. Cross Q. When were the articles stated in this entry delivered; that is, the dates and to whom?

A. The dates I could not positively say. Mr. Imlay ordered me to send them to the glass-manufacturer.

18. Cross Q. Where is the account of the American Fruit-Jar Company in this book?

A. They only got a few articles and paid cash for them, so I never entered it, so far as I recollect at present.

218 19. Cross Q. Have you done work for S. B. Rowley?

A. Yes, sir.

20. Cross Q. Have you done work for him lately?

A. No, sir.

21. Cross Q. When did you do the last work for him directly or indirectly?

A. On July 8th, 1865.

22. Redirect. You say in answer to Cross-Q. 17, that Mr. Imlay ordered you to send them to the glass-manufacturers?

A. To C. B. Tice & Co., Medford Glass Works, Burlington County, N. J.

CHARLES YOEKEL.

Sworn to and subscribed before me this second day of October, A D. 1873.

W. GRIER HIBLER,
Examiner.

Adjourned till Friday, October 3, 1873, at 9 o'clock a. m.

219 TUESDAY, *October* 21, 1873.

Present: Mr. Howson, for respondents; Mr. Todd, for complainants.

WILLIAM L. IMLAY, a witness on behalf of defendant, being duly sworn, says:

1. Q. What is your name, age, residence, and occupation?

A. William L. Imlay; aged twenty-seven years; residence, Trenton, N. J.; I am in the tobacco business.

2. Q. Where and with whom were you occupied in the year 1865?

A. In Philadelphia, with my father, C. G. Imlay.

3. Q. What was your father engaged in at that time?

A. In the construction and completion of the Hero fruit-jar.

4. Q. Please describe that jar.

A. It was composed of a jar with a shoulder and a neck above the shoulder; a rebate in the neck above the shoulder; a gum ring with a cover resting thereon, with a flange on the cover, with a screw-thread on the neck of the jar below the shoulder, with an open screw-ring clamping the two parts together.

5. Q. If you know Mr. Thomas Otterson of this city, state how, and as near as you can, when you became acquainted with him.

A. I think I became acquainted with him in 1865, the early part; I can't recollect how I became acquainted with him.

6. Q. If to your knowledge your father had any business transactions with Mr. Otterson, state about when you first had knowledge thereof, and to what, if you know, those business transactions referred.

A. It must have been in the early part of 1865; I knew nothing of the business transaction until after it was completed.

7. Q. What, if anything, had you personally to do with the construction and completion of the Hero jar?

220 A. Nothing further than to carry out father's orders; I superintended the entire mechanical construction of the jars.

8. Q. About when, if you recollect, did you first see a Hero jar complete?

A. About 15th July, 1865.

9. Q. If you have in your possession one of the Hero jars made as you say in 1865, will you please produce it?

A. I have one. Jar produced and marked "Defendant's Exhibit No. 29."

10. Q. When, if you recollect, did Exhibit No. 29 come into your possession and where has it been since?

A. About July, 1865, it came into my possession and has been there ever since.

11. Q. You have stated that you superintended the mechanical construction of the jars; please describe more particularly the nature of the work which you superintended.

A. The alteration of the moulds from the Otterson form of jar to that of the Hero form; the construction of chucks for the spinning of sheet-metal rings; the sheet-metal screw-rings.

12. Q. What was the Otterson form of jar to which you have referred in your last answer? In what respects did it differ from Exhibit No. 29?

A. It was a jar having an outside shoulder, with a neck above the shoulder, a rebate in the neck above the shoulder, a cover resting on the rubber above the shoulder, an incline on the neck below the shoulder, the clamp or bale resting on the center of the cover and binding the two parts together by means of the inclines.

13. Q. What, if any, difference was there between the form of cover in the Otterson jar and Exhibit No. 29?

A. The Otterson jar-cover had no flange around its edge.

14. Q. Please look at Exhibit No. 27, and state wherein, if at all, that differs from the cover to the Otterson jar to which you have referred.

A. There is no apparent difference.

15. Q. By whom were the alterations of the moulds from the Otterson form of jar to that of the Hero jar made?

A. By Weidig & Yoekel of this city.

221 16. Q. You say that you also superintended the construction of chucks for the making of sheet-metal screw-rings. If you have in your possession such a chuck made at the time to which you have reference, please produce it and state by whom it was made.

A. This is the chuck, and it was made by Weidig & Yoekel.

(Chuck offered in evidence and marked "Defendant's Exhibit No. 30.")

17. Q. About how many Hero jars, if you recollect, were made at the time Exhibit No. 29 came into your possession?

A. I have no idea of the quantity.

18. Q. About when and where, if at all, did you first see Hero jars, such as Exhibit No. 29, in use?

A. In Philadelphia, in the latter part of the year 1865.

19. Q. State, if you recollect, whether Hero jars differing from Exhibit 29 as to size were made; and, if yea, by whose instructions, if you know, and about when.

A. Yes, there were different-sized jars made, quarts, pints, and half-gallons; they were made under father's instructions, and about the latter part of the year 1865; they were made complete at that time.

20. Q. Please look at Exhibit 12 and state wherein that differs, if at all, from the half-gallon jars you say were made at that time.

A. Jars like this and different from this were made at the same time.

21. Q. Are you, or not, familiar with the handwriting of Mr. C. G. Imlay?

A. Yes, sir; I am.

22. Q. Please examine the letters and envelopes, Exhibits 17 to 23 both inclusive, and state, if you know, in whose handwriting the letters and addresses are.

A. C. G. Imlay's.

23. Q. Please look at the circular, Exhibit No. 24, and state when, if at all before to-day, you saw such a circular.

(Objected to as immaterial.)

222 A. I saw it several years ago, but can't give the date.

24. Q. By whom, if you know, was that circular issued?

(Same objection continued.)

A. C. G. Imlay.

25. Q. In letter, Exhibit 17, dated July 6, 1865, on page two, I read the following: "William has already taken a plaster-cast of the neck of the half-gallon mould, and will have caps or rings ready by the time samples come up." State, if you can of your own knowledge, what person and what work are there referred to.

(Same objection.)

A. The person was myself, and the work the half-gallon Hero jar. The cast was for testing the neck of the jar for adjusting the sheet-metal screw-ring.

26. Q. In letter, Exhibit 19, dated August 3, 1865, I read as follows: "William has pretty much finished his tools for caps, and I tell you they do work sweetly on the half-gallon jar;" state, if you know, what person, what tools, and what jar are here referred to.

(Same objection.)

A. The person was myself. The tools, the chuck, and the half-gallon jar was the Hero.

27. Q. Please look at the sheet-metal screw-ring now shown you. What, if anything you know about it?

A. It was made on a wooden chuck, in the month of April, 1865. I don't know who it was made by; it was made for the Hero jar.

(Exhibit No. 31 put in evidence. Exhibit objected to as immaterial.)

28. Q. You have stated that you saw in use in the city of Philadelphia, in the latter part of 1865, Hero jars such as Exhibit No. 29; for what purpose were said jars being used at that time?

A. Household purposes.

223 Cross-examined by Mr. Todd:

29. Cross Q. When you say household purposes, do you mean that you saw a jar or jars with fruit in them, in the latter part of the year 1865?

A. I do.
30. Cross Q. Now where did you see that jar or jars of fruit?
A. In Philadelphia, 327 Pine street.
31. Cross Q. Whose place was this?
A. C. G. Imlay's.
32. Cross Q. Do you mean at your father's house?
A. Yes, sir.
33. Cross Q. Did you reside there at the time?
A. I did.
34. Cross Q. For how long afterwards?
A. Until the day he evacuated the premises. I can't tell when that was.
35. Cross Q. Where was this jar or jars kept in your father's house?
A. In the cellar.
36. Cross Q. When did you see that jar or jars containing this fruit for the last time?
A. That I can't answer as to date, but I expected they were used up.
37. Cross Q. Were not these jars put up with fruit in order to test the jars?
A. Originally, they were.
38. Cross Q. Was this Exhibit 29 a jar that originally had fruit put into it?
A. I think not.
39. Cross Q. Where did you get this jar, Exhibit 29, from, and when?
A. I have always had it since it was made.
40. Cross Q. Where have you kept it?
A. At the office among other samples.
41. Cross Q. At what office?
A. 228 South Third street, and 221 Dock street, and 25 Merchants' Exchange.
224 42. Cross Q. Where has it been lately?
A. At 25 Merchants' Exchange.
43. Cross Q. At whose place there?
A. C. G. Imlay & Son's.
44. Cross Q. Then it has not been in Trenton with you?
A. No, sir, it has not been in Trenton.
45. Cross Q. Is the son referred to as a part of the firm of C. G. Imlay & Son, yourself?
A. Yes, sir.
46. Cross Q. What is the business that firm carries on?
A. A very general business; I don't know that I can enumerate it.
47. Cross Q. What business did it carry on in the years 1865, 1866, and 1867?
(Objected to as it does not appear that the firm existed in those years.)
A. There was no such firm in existence at that time.
48. Cross Q. In what business was your father in those years?
A. That is a question he could answer better than I can.
49. Cross Q. When did firm of C. G. Imlay & Son form?
A. About 1872.
50. Cross Q. Can you not give us some idea of what business your father was engaged in from 1865 to 1867?
A. A part of his business appeared to be getting up the Hero jar.
51. Cross Q. Were you engaged with him during those years?
A. Yes, sir.

52. Cross Q. Were you engaged with him subsequently and until the firm of C. G. Imlay & Son was formed in 1872?

A. Occasionally I was.

53. Cross Q. What was his business subsequent to the year 1869, and until that partnership was formed?

A. I can't say.

54. Cross Q. When did you go to Trenton, to do business there?

A. About two weeks ago.

55. Cross Q. Did you reside with your father until then?

A. Yes.

225 56. Cross Q. What was Thomas G. Otterson engaged at in 1865, and subsequently?

A. In 1865 he was a glass-blower; beyond that I don't know.

57. Cross Q. When did you see Exhibit 12 jar, first?

A. I guess it was in 1865.

58. Cross Q. When did you see it last, previous to your coming here to-day?

A. I think the last time I saw it was on my shelf, 228 South Third street, Philadelphia; I can't recollect when?

59. Cross Q. Who got it to bring here?

(Objected to as not cross.)

A. I don't know, sir.

60. Cross Q. What are the lugs on the jar Exhibit 12, for?

A. I believe I can't tell you.

61. Cross Q. Did you have anything to do with the alteration of the mould from which that jar was obtained?

A. I had; not that jar, but the mould.

62. Cross Q. When was that jar made?

A. In 1865, I presume.

63. Cross Q. When in 1865?

A. The latter part of 1865.

64. Cross Q. How many of such jars were then made?

A. I have no definite recollection about the quantity.

65. Cross Q. Did you get one or more of such jars as Exhibit 12, as samples to keep over at that time?

A. Yes.

66. Cross Q. Who got jar, Exhibit 29, from C. G. Imlay & Son's place?

A. Myself.

67. Cross Q. Did not Mr. Rowley see you about bringing it here?

A. Well, no; nothing particular.

68. Cross Q. Did he see you in Trenton or this city about bringing it?

A. He didn't see me either place particularly about bringing it.

226 69. Cross Q. At which place did you in fact see him?

A. I saw him in both places.

70. Cross Q. Is not Mr. Rowley engaged in the fruit-jar business?

A. I can't say.

71. Cross Q. Have you not heard that he was?

(Objected to as not cross.)

A. Some time ago I believe I did.

72. Cross Q. Did you not also hear that he had sold fruit-jars to the defendant in this suit for the selling of which such defendant had been proceeded against?

(Same objection.)

A. I know nothing about it, I believe.

73. Cross Q. How often has Mr. Rowley seen you previous to your

testifying here, and respecting your being called as a witness, and giving testimony on the part of the defendant?

A. I have seen him twice.

74. Cross Q. Within what time previous to to-day?

A. Within a week.

75. Cross Q. Where did you get this chuck, Exhibit 30, from, and when?

A. It has been in my possession ever since.

76. Cross Q. Where did you bring it from when you came with it here to testify?

A. From 25 Merchants' Exchange, Philadelphia.

77. Cross Q. In what place was it kept there?

A. It had no particular resting place, I believe.

78. Cross Q. Where did you get the screw-ring, Exhibit No. 31, from when you came here to testify with it?

A. I took it from another jar of the same kind.

79. Cross Q. Where was such jar?

A. Among a lot of samples at 25 Merchants' Exchange.

80. Cross Q. How are you enabled to swear that this screw-ring was made in April, 1865?

227 A. Because it was made a few months previous to the making of the chuck.

81. Cross Q. Do you know in what way it was made?

A. Spun over a wooden chuck.

82. Cross Q. Did you see it made?

A. I think I did.

83. Cross Q. For what purpose was this particular ring spun over a wooden chuck?

A. Simply because we had no iron chuck.

84. Cross Q. Was it not to try to see if you could spin it over a wooden chuck and make a perfect ring, so far as a perfect and sound thread was concerned?

A. No, sir.

85. Cross Q. Has the sheet-metal screw-ring, Exhibit 31, a perfect and sound thread?

A. I guess it had at one time; it is old now.

86. Cross Q. Question repeated.

A. I believe so; I see no flaws in it. Upon examination, I believe it to be cracked.

87. Cross Q. Was it not so when it was first made?

I cannot say; I did not examine it.

88. Cross Q. Will you swear that it was not.

(Objected to as improper, and as already answered.)

A. No, sir; I couldn't swear anything about it.

W. L. IMLAY.

Sworn and subscribed before me this 21st day of October, 1873.

W. GRIER HIBLER,
Examiner.

Adjourned till to-morrow at ten o'clock a. m.

228 WEDNESDAY, *October* 22, 1873.

Present, counsel as before.

NEWELL IMLAY, being duly sworn, deposes and says:

1. Q. What is your name, age, residence, and occupation?

A. Newell Imlay; age, twenty-four years; residence, Trenton, N. J.; business, cigars and tobacco.

2. Q. Where and with whom were you employed in the year 1865?
A. With Charles G. Imlay, my father.
3. Q. If you know Mr. Thomas G. Otterson, of this city, state as nearly as you can when and under what circumstances you became acquainted with him.
A. I think it was in the early part of 1865; I made his acquaintance in connection with the fruit-jar business.
4. Q. If you have knowledge of any business transaction between your father and Mr. Otterson, state as nearly as you can when you first had such knowledge and to what the business referred.
A. In the early part of 1865, in reference to fruit-jars, and the purchase of a patent from Mr. Otterson.
5. Q. State, if you know, what patent that was, and for what purpose your father desired to purchase it.
A. It was Otterson's patent, with the outside shoulder, neck above the shoulder, glass top and iron clamp for fastening the top by means of inclines under the shoulder. My father desired to purchase it to effect a combination with the screw-ring and Otterson patent.
6. Q. To what screw-ring have you reference in your last answer?
A. The open sheet-metal screw-ring.
229 7. Q. In what, if any, patent to your knowledge was that open sheet-metal screw-ring shown?
A. In combination of the two patents known as the Hero jar.
8. Q. Question repeated.
A. It was first seen upon the American Fruit Company's jar.
9. Q. What, if any, steps to your knowledge were taken by your father to produce the combination to which you refer, and when, to the best of your recollection, were the first of such steps taken?
A. In the early part or about the middle of 1865. The steps he took were to place himself in communication *of* Mr. Otterson for the purpose of purchasing the patent.
10. Q. If any jar was produced showing the combination to which you have reference, state as nearly as you can when you first saw such a jar and by what, if any, name it was then known.
A. In July or August of 1865. It was known as the Hero.
11. Q. Who, if you know, produced the first moulds for the Hero jar, and from what were they produced?
A. They were made by Weidig & Yoekel from the original Otterson mould.
12 Q. Who, if you know, immediately superintended the alteration of these moulds?
A. William L. Imlay, my brother.
13. Q. Please describe the Hero jar as you first saw it in July or August, 1865.
A. A jar with an outside shoulder, neck above the shoulder, screw-thread below the shoulder, glass cover, and sheet-metal screw-ring, glass cover lapping over, laying over the shoulder or resting upon the shoulder, the sheet-metal screw-ring screwed onto the neck of the jar below the shoulder.
14. Q. If any packing was employed with the jars as you first saw them, state what that packing was and where it was situated?
A. Gum-ring; resting upon the outside shoulders.
230 15. Q. Please examine Exhibit 29, and state wherein, if at all, that exhibit differs from the Hero jar seen by you in July or August, 1865?
A. I see no difference. I think it was blown from the moulds I spoke of; that is, the original Otterson moulds as altered.

16. Q. If to your knowledge Hero jars differing from Exhibit 29 in size were made, state as nearly as you can when, under whose instructions, and what the sizes were?

A. Yes, sir; there were pint and three-pint moulds.

17. Q. Have you enumerated all the different sizes you recollect?

A. There might have been a half-gallon.

18. Q. If you saw any of the Hero jars of which you have spoken in use, state as nearly as you can how many, and where and when first.

A. The number I can't be positive about, but I saw them in use at home in the latter part of the summer of 1865.

19. Q. Whereabouts at home did you see these jars, and by whom, if by any one other than yourself, do you know them to have been seen in use?

(Latter part of question objected to as being in nature of hearsay, and immaterial and incompetent.)

A. Some in the cellar, some in the sitting-room, occupied as an office by my father, at No. 327 Pine street, Philadelphia. They were seen by everybody about the house, possibly seen by relatives coming to the house.

20. Q. Whereabouts were those jars situated which you say were in the sitting-room occupied by your father as an office.

A. On the mantel-piece.

21. Q. What, exactly, do you mean when you say that that room was occupied by your father as an office?

A. To receive visitors upon business matters.

22. Q. Where else, if anywhere, besides the house, do you recollect seeing Hero jars, and when first?

A. I don't know, except it might be at the office occupied by father at 228 South Third street.

231 23. Q. What, if any, work, other than the alteration of the moulds, was to your personal knowledge done by Weidig & Yoekel in connection with the Hero jar?

(Objected to as immaterial.)

A. They made the chucks for spinning the metal rings.

Cross-examined by Mr. Todd:

24. Cross Q. When did you first go into the employ of your father?

A. Ever since I can recollect.

25. Cross Q. How long back can you recollect?

A. Far beyond the fruit-jar business.

26. Cross Q. How many years back can you recollect?

A. That I can't state positively.

27. Cross Q. When did you leave school?

A. I can't tell you exactly the date within a few years. Those are things which have not been much impressed on my memory.

28. Cross Q. How old were you when you left school?

A. I can't say.

29. Cross Q. At what were you employed for your father in the year 1865?

A. Clerk.

30. Cross Q. What did you do as clerk?

A. I did his writing, run his errands, &c.

31. Cross Q. What was his business in that year?

A. Inventor and patentee.

32. Cross Q. What was his business in the two following years?

A. The same business.

33. Cross Q. Was not your father getting out, or trying to get out, another fruit-jar in the year 1865, the cover of which was acted upon in use by atmospheric pressure?

(Objected to as not cross-examination but new, matter.)

232 A. I think it is very likely, but wouldn't be positive.

34. Cross Q. Did he keep samples of such last referred to kind of jar?

(Same objections.)

A. If he was experimenting at that time, he did keep samples.

35. Q. Was 327 Pine street your father's place of residence?

A. Yes, sir.

36. Q. When did your father remove from there?

A. To a boarding-house near by; I can't recollect the year. Those are things that I never had fastened upon my recollection.

37. Q. When did your father take an office at 228 South Third street? Give the year.

A. In 1866, I think, or the latter part of 1865.

38. Q. What enabled you to give this date?

A. I can't say that anything particular did, except my recollection. I might add that, having moved from 327 Pine street, he was compelled to take an office somewhere.

39. Q. Was not the fruit which was placed in those jars which you saw in the cellar and in the sitting-room taken out of other jars, being fruit which had been already preserved, or don't you know about this?

A. I think not, sir.

40. Q. Do you know who put the preserved fruit into those jars?

A. Mother, I should think. She was sometimes assisted by my father and brother when they were experimenting.

41. Q. How long have you been at Trenton?

A. About two weeks.

42. Q. Who called on you to give testimony in this case?

A. Mr. S. B. Rowley.

43. Q. When first?

A. Day before yesterday was the first I saw of him.

44. Q. What place?

A. No. 41 Green street, Trenton, New Jersey.

NEWELL IMLAY.

Sworn and subscribed before me this twenty-second day of October, A. D. 1873.

W. GRIER HIBLER,
Examiner.

233 Counsel for respondent offers in evidence the following letters-patent:

Patent granted to W. W. Lyman for improvement in fruit cans, No. 22426, dated December 28, 1858, marked "Exhibit No. 32."

Re-issue of said patent granted to W. W. Lyman on June 16th, 1868, marked "Exhibit No. 33."

(Objected to as immaterial.)

Patent No. 33938, dated December 17, 1861, for improved preserve-jar, granted to N. S. Gilbert, marked "Exhibit No. 34."

Re-issued letters-patent No. 3111, dated September 1, 1868, granted to S. B. Rowley, assignee of N. S. Gilbert, for improved fruit-jar, marked "Exhibit No. 35."

(Objected to as immaterial.)

Letters-patent No. 36853, dated November 4, 1862, to Thomas G. Otterson, for improved fruit-jar, marked "Exhibit No. 36."

Re-issued No. 2977, dated 9th June, 1868, granted to S. B. Rowley, assignee by mesne assignments from T. G. Otterson, for improved fruit-jar, marked "Exhibit No. 37."

(Objected to as immaterial.)

Re-issue of same patent, marked "Exhibit No. 38."

(Objected to as immaterial.)

234 Letters-patent No. 47834, dated May 23, 1865, antedated December 6, 1864, granted to Charles G. Imlay, for improvement in fruit-jar, marked "Exhibit No. 39."

Also, re-issue of that patent No. , dated , granted to S. B. Rowley, assignee of C. G. Imlay, marked "Exhibit 40."

(Objected to as immaterial.)

And letters-patent No. 49256, granted August 8, 1865, to W. T. Gillinder and Edwin Bennett, for improvement in fruit-jars, marked "Exhibit No. 41."

Letters-patent 55581, dated June 12, 1866, granted to T. H. and S. A. Whitney, assignees of John Foser, for improvement in fruit-jar, marked "Exhibit 42."

Re-issued letters-patent No. 4781, dated December 28, 1869, granted to T. H. & S. A. Whitney, assignees of John Foser, for improvement in fruit-jar, marked "Exhibit No. 43."

(Objected to as immaterial.)

Letters-patent No. 97964, dated December 14, 1869, granted to S. B. Rowley, for improved fruit-jars, marked "Exhibit No. 44."

Adjourned till Friday next at 12 m.

235 FRIDAY, *October* 24, 1873.

Present: Counsel as before.

ALBERT T. ZEISING, being duly sworn, deposes and says:

1. Q. What is your name, age, residence, and occupation?

A. My age is 44; residence, 1550 North Sixth Street, Philadelphia; by occupation, a printer.

2. Q. What was your business in 1865, and where was it carried on?

A. In 1865 I was carrying on the printing business at the northwest corner of Second and Chestnut. The firm-name at that time was Rawlings & Zeising.

3. Q. If you are acquainted with Mr. Charles G. Imlay, of this city, state about when and how you became acquainted with him.

A. I suppose I became acquainted with him about August, 1865. He ordered a job then, but I presume that I did not know then that it was Mr. Imlay, from the fact of the first item in the book being charged to Hero jar instead of Mr. Imlay.

4. Q. If you have with you the original book of entries kept by the firm of Rawlings & Zeising in the year 1865, will you please produce it?

(Objected to as immaterial.)

A. I have, and produce it.

5. Q. If in that book you find any charge against Mr. Imlay for work done, will you please refer to and read such charge and state in whose handwriting it is?

(Objected to as immaterial.)

236 A. I find, October 11, 1865, a charge in the following words: "Mr. Imlay (Hero jar) 225 circulars, $4.75." That is in my handwriting.

6. Q. If in that book you find any other charge referring to Hero jar, will you please refer to and read it, and state in whose handwriting it is?

(Same objection.)

A. The first one is Mr., (Hero jar,) 250 octavo bills, $2.00. That is in my handwriting.

(Book referred to by witness marked "Exhibit No. 45" for identification of the record.)

7. Q. Please examine carefully Exhibit No. 24 and state what, if anything, you know about it.

(Same objection.)

A. The first item as to date that I showed in my book I believe has reference to this circular, and it was set up by us in this same style, and were it not for one line on it (I refer to the words glass and locking) would think that this was the circular that we set up; but that letter looks to me as being one size smaller than the letter we had.

8. Q. If you have in your possession the cut used by you in setting up the Hero jars circular referred to by you, will you please produce it?

(Same objection.)

A. I have, and now produce it.

(Cut offered in evidence and marked "Exhibit No. 46."

Same objection to introduction of the cut as exhibit.)

237 9. Q. If you have with you a proof taken from the cut Exhibit No. 46, please produce it, and say when, where, and by whom it was taken.

(Same objection.)

A. It was taken this morning in my office, southeast corner of Fourth and Chesnut, by myself.

(Proof offered in evidence and marked "Exhibit No. 47."

Same objection to introduction of the proof as an exhibit.)

Cross-examination de bene esse:

10. Cross Q. Who made this cut, Exhibit No. 46?

A. I do not know, sir.

11. Cross Q. Then the charge for 225 of these circulars like Exhibit No. 24 was $4.75. Is this what you mean?

(Objected to as assuming what the witness has not stated.)

A. I don't understand that question.

12. Cross Q. Was the price for 225 of these circulars like Exhibit 24 the sum of $4.75?

A. No, sir.

13. Cross Q. Then what were these 225 circulars? Describe them.

A. That I can't tell you, sir. It was evidently a finer job, judging from the price, but in what shape I can't tell.

14. Q. If you cannot tell as to such item, how can you tell as to the other, viz, of 250 8vo bills?

A. This (Exhibit 24) is an octavo bill, and the only 8vo bill, to the best of my knowledge and belief, that we done for the Hero jar.

15. Cross Q. Do you state this latter matter from your memory simply?

A. Well, assisted by that item in the book.

238 16. Cross Q. Can you produce one of the 225 circulars or a facsimile of one?

A. I cannot.

ALBERT T. ZEISING.

Counsel for defendant puts in evidence certified copy of the file, wrapper and contents in matter of letters-patent granted to S. B. Rowley, dated December 14, 1869, and numbered 97964, for preserve-jars, which is marked "Defendant's Exhibit No. 48."

(Introduction of exhibit objected to as incompetent and immaterial.)

Counsel for complainant asks the counsel for defendant to state if he has any more testimony to introduce, or if he here rests his case.

To which acting counsel for defendant replies that he must refer complainant's counsel to the counsel of record for defendant for an answer.

Counsel for complainant asks of acting counsel to state, as this is the last day within which defendant is to take testimony, if he, acting counsel, proposes to introduce any more testimony, so that he, counsel for complainants, will know that the examination of witnesses is closed and take his leave.

To which defendant's acting counsel replies that he does not intend to take any more testimony to-day, nor under the notice under which this examination is held.

239 CONSOLIDATED FRUIT-JAR CO.
vs.
WHITE.

MONDAY, 29*th December*, 1873.

Present: Mr. Howson, Mr. Todd.

JAMES J. CHRISTIE, being duly sworn, deposes and says:

1. Q. What is your name, age, residence, and occupation?

A. James J. Christie; age, thirty-three years; reside Ninth and Lawrence streets, Camden, N. J.; occupation, glass-blower.

2. Q. Where and with whom were you in business in the year 1865?

A. At 924 Clairborn street, or back of it, in Kensington; in business with my father and brother, glass-making.

3. Q. If you know Mr. Charles G. Imlay, of this city, state about when you became acquainted with him, and how.

(Objected to as not in reply or rebuttal of complainant's case.)

A. I became acquainted with him some time in July or August, 1865, by his coming up to the factory to have some work done.

4. Q. State what that work was.

(Same objection continued until further notice.)

A. It was for to try moulds for jars and stoppers.

5. Q. If this work was done to your knowledge, say about when; and if any jars and stoppers were then made, how many, as nearly as you can recollect.

A. In July or August of 1865 we made some 14 or 18 jars, and I suppose a barrel of stoppers.

6. Q. Describe these jars and stoppers as you recollect them.

A. The jar had an outside shoulder, thread below the shoulder; it had a raised part from the shoulder where the gum went on—a kind of a lip I would call it. The stopper went down on this shoulder, pressed onto the gum, pressed down and secured by this screw-ring screwing down over the edge of the stopper.

240 7. Q. Whereabouts are we to understand that the gum rested?

A. It rested onto the flat part of the shoulder.

8. Q. What, if any name, to your recollection, was upon the jars?

A. I think, to the best of my knowledge, it was the Hero jar. Perhaps the name was not cut on the moulds of the first we tried; I wouldn't say; they were old moulds altered.

9. Q. Where, if you know, did the moulds come from to your place?

A. I suppose they came right direct from the mould-maker's.

10. Q. Do you of not know who that mould-maker was? If yea, give his name.

A. I knew at that time that Weidig & Yoekel did our work, and I suppose they made or altered these moulds; I would not say. The moulds came there on a car; they were generally brought up by William Imlay.

11. Q. If, after making for Mr. C. G. Imlay the 14 or 18 jars which you have described, you made for him other jars of like description, state as nearly as you can when and about how many.

(Also objected to as leading.)

A. Once or twice after that we made some during that summer; how many I cannot say; we made some for him the next year.

12. Q. Please look at defendant's Exhibit No. 29 and state wherein, if at all, that exhibit differs from the 14 or 18 jars or stoppers made for Mr. Imlay in July or August, 1865, or from those which you say you made for him subsequently.

(Also objected to as immaterial.)

A. It looks very much like the jar that we have tried; that is all that I can say about it. I don't see where it differs any.

13. Q. If you at any time saw in use any of the jars made by you for Mr. Imlay in 1865, state as nearly as you can when, and in what place or places.

(Also objected to as witness's name has not been given in the answer.)

241 A. I took two or three home myself, also my father took two or three, also at Mr. Imlay's residence at Pine street; I think it was at that time; the time was later in the summer, after we had tried the moulds; about September or October; I couldn't say.

14. Q. The jars which you so saw were being used for what purpose, if any?

(Same objections.)

A. For putting up peaches, I suppose; that is what I used them for.

15. Q. By what, if any, means were the caps of the jars which you say you used and of those you say you saw in use elsewhere fastened to the jars themselves?

(Same objection, and latter part of question as asserting that which the witness has not testified to.)

A. They were fastened with a coupling or screw-ring.

16. Q. How, if at all, did these screw-rings differ from that on Exhibit 29?

A. That looks very much like it.

17. Q. About how many of these jars did you see at Mr. Imlay's residence in Pine street, and what, if anything, did they contain?

A. I saw a number of them standing on a table; they contained fruit of different kinds.

Cross-examined by Mr. Todd de bene esse:

18. Cross Q. Where are you now employed?

A. I am not now employed at any place; I am watching a glass factory at night.

19. Cross Q. Whose glass factory are you watching at night?

A. The property of Thomas P. Gibbons, situated on Cooper's Creek, Camden, New Jersey.

242 20. Cross Q. Were not the two or three jars which you took home taken to try or as a matter of experiment in filling them with fruit?

A. No, sir.

21. Cross Q. Will you swear that you did not take these two or three jars home for the purpose of trying them?

A. When we put fruit in all new jars, we do it to see if they will keep fruit or not. They were used with a lot of others at the time. In putting up fruit in a new jar, it is an experiment any way, to see if it will keep fruit or not.

22. Cross Q. Were you subpœnaed?

A. No, sir.

23. Cross Q. When were you first asked to attend as a witness?

A. Three or four months ago.

24. Cross Q. When last?

A. Last Saturday.

25. Cross Q. Were you willing to come when you were asked, three or four months ago?

A. I stated to the party that I did not think I could do them any good, as I had no book account of this transaction.

26. Cross Q. Why did your mind change in regard to the matter on Saturday last?

A. I was asked if I could go back that far in memory. I told him yes, I could recollect all that I have stated here.

27. Cross Q. Did you refuse to come here on Saturday last?

A. No, sir.

28. Cross Q. Did you refuse to come three or four months ago?

A. Yes, sir.

29. Cross Q. Why did you then refuse, and be willing to come on Saturday last?

(Objected to as already asked and answered.)

A. I have answered that question once; the reason, I told the
243 party I had no book-account. It was a matter of friendship. Those things were tried at that time. There was no charge; no bills made out.

30. Cross Q. Why, then, I mean, were you willing to come on Saturday last, since you told these facts to the party three or four months ago at the time you refused to come?

(Same objection.)

A. The gentleman stated on Saturday that I was the only one that he knew who had tried these moulds for him, and it did not matter about a book-account; that I could come over and swear to the best of my knowledge.

31. Cross Q. Did he not tell you in substance this three or four months ago, at the time when you told him that you had no book-account of it; and did you not then absolutely refuse to come and testify?

A. No, sir.

32. Cross Q. But did you not, three or four months ago, absolutely refuse to come and testify about it?

A. Not for the party.

33. Cross Q. For whom did you refuse?

A. I did not refuse any one.

34. Cross Q. Who was the party who wanted you to come three or four months ago?

A. Mr. Imlay and his son William.

35. Cross Q. Who called on you on Saturday to get you to come here?

A. Mr. Imlay, the father.

36. Cross Q. Did they tell you how or why they were interested in calling on you and getting you to testify in this case?
A. No, sir.
37. Cross Q. Did you not hear them speak of Mr. Rowley's interest in this case?
A. No, sir.
38. Cross Q. You met Mr. Rowley here to-day, did you not?
A. Yes, sir.
39. Cross Q. Did he not speak to you about your giving testimony in this case?
A. No, sir; I met Mr. Rowley unexpectedly here to-day.
244 40. Cross Q. Had you not curiosity enough to ask Mr. Imlay how he was so much interested as to go after you as a witness?
A. No, sir. We often meet; we are quite near neighbors in Camden.
41. Cross Q. Did he tell you who sent him to you?
42. Cross Q. Did you not suspect that Mr. Rowley sent him to get you to come as a witness?
A. No, sir.

J. J. CHRISTIE.

Sworn and subscribed before me this twenty-ninth December, A. D. 1873.

W. GRIER HIBLER,
Examiner.

Counsel for defendant here states that, having so far been unable to obtain complete certified copies of the original and re-issued letters-patent of W. W. Lyman, heretofore referred to in this record as Exhibits Nos. 32 and 33, he here offers in evidence a certified duplicate of the model filed (marked "Exhibit No. 49") by W. W. Lyman in the matter of his application for said original patent.
(Introduction of model objected to as immaterial and incompetent.)
Adjourned till to-morrow at 12 o'clock m.

TUESDAY, *30th December*, 1873, at 12 m.

Model, Exhibit No. 49, produced and offered in evidence.

245 *Defendant's exhibit No. 4.*

[Sole agent and manufacturer of A. Stone & Co.'s improved screw-top fruit-jars; all glass.]

MEDFORD, *March 27th*, 1866.

Mr. S. B. Rowley bought of Lewis Ireland, manufacturer and dealer in porters, minerals, wines, druggist, and other glassware, Medford, Burlington Co., N. Jersey:

1 box, containing	8 cts.
1 35–72 gross Imlay jar-stoppers, $3.50 per gross	5 20

Rec'd payment,

LEWIS IRELAND.
Per J. E. Ayars.

P. S.—If I made them in quantity I might do a little better, if they save right. I suppose this 1 35–72 gross cost me over $10, being 1st.

Defendant's exhibit No. 5.

PROGRESS, *Aug.* 31, 1866.

Mr. S. B. Rowley to Riverside Glass Co.

1866.					
May 29.	4½ gro. ½ gall. jars		$20	$90 00	
	5⅓ gro. quarts		13	69 33	
	3 gro. pints		9	27 00	
					186 33
246					$186 33
	30. 3⅓ gro. quarts		13	43 33	
	2½ gro. half gall		20	50 00	
					93 33
	31. 9 gro. quarts		13	117 00	
					177 00
	3 gro. half gall		20	60 00	
June	1. 10 gro. pints		9	90 00	
	14½ gro. quarts		13	188 50	
	2. 4 gro. half gall		20	80 00	
	3⅔ gro. quarts		13	47 66	
	8 gro. pints		9	72 00	
	4. 4 gro. half gall		20	80 00	
	3⅓ gro. quarts		13	43 33	
	5. 10 gro. quarts		13	130 00	
	1 gro. half gall			20 00	
	6. 2⅔ gro. pints		9	24 00	
	8⅔ gro. quarts		13	112 66	
					888 15
	7. 7⅓ gro. pints		9	66 00	
	½ gro. half gall		20	10 00	
	8. 4 gro. half gall		20	80 00	
	2 gro. quarts		13	26 00	
	2⅔ gro. pints		9	24 00	
	9. 6 gro. half gall		20	120 00	
	9⅓ gro. quarts		13	121 33	
					447 33
	11. 5⅓ gro. quarts		13	69 33	
	12. 3⅓ gro. quarts		13	43 33	
	13. 3 gro. half gall		20	60 00	
	14. 5⅓ gro. quarts		13	69 33	
	15. 2½ gro. half gall		20	50 00	
	4⅔ gro. quarts		13	60 66	
	16. 3 gro. half gall		20	60 00	
	10⅔ gro. quarts		13	138 66	
					551 31
247	Amount forward.				
	19. 1½ gro. half gall		20	30 00	
	16 " quarts		13	208 00	
	20. 12⅔ " "		13	164 66	
	4⅔ " pints		9	42 00	
	21. 12 " quarts		13	156 00	
	4⅔ " "		9	42 00	
					642 66

	22.	10	gro.	quarts	13		130 00	
		5⅓	"	pints	9		48 00	
	23.	12	"	½ gall	20		20 00	
		8	"	quarts	13		104 00	
		3⅓	"	pints	9		30 00	
								332 00
July	26.	1½	gro.	½ gall	20		30 00	
		14⅔	"	quarts	13		190 66	
	27.	9⅓	"	quarts	13		121 33	
	28.	12	"	"	13		156 00	
	29.	15⅙	"	"	13		197 16	
	30.	11⅔	"	"	13		151 66	
								846 81
July	2.	4 10/12	gro.	quarts	13		53 08	
	3.	1	"	"			20 00	
		7 10/12	"	"	13	00	101 83	
	5.	8⅔	"	"	13	00	112 66	
		½	"	½ gall	20	00	10 00	
	6.	2	"	½ "	20	00	40 00	
		15⅓	"	quarts	13	00	199 43	
	7.	12 10/12	"	"	13	00	166 83	
		2	"	½ gall	20	00	40 00	
								743 83
	9.	2½	gro.	½ gall	20		50 00	
		7	"	quarts	13		91 00	
	11.	2½	"	½ gall	20		50 00	
		7⅓	"	quarts	13		95 33	
								286 33
248			Amount forward.					
	10.	4	gro.	½ gall	20		80 00	
		5⅓	"	quarts	13		69 33	
	12.	1	"	½ gall			20	
		8⅔	"	quarts	13		112 66	
	13.	2	"	"	13		26 00	
		16⅔	"	"	13		216 66	
		10⅔	"	"	13		138 66	
								949 64
	16.	10⅔	gro.	quarts	10⅓		112 00	
	17.	2½	"	½ gall	16	50	41 25	
		8⅔	"	quarts	10	50	91	
	19.	3	"	½ gall	16	50	49 50	
		14	"	quarts	10	50	147 00	
	20.	8½	"	½ gall	16	50	140 25	
	6	10–12	gro.	quarts	10	50	71 75	
	21.	24½	"	"	10	50	257 25	
								910 00
	23.	7⅓	gro.	quarts	10	50	77 00	
		1½	"	½ gall	16	50	24 75	
	24.	4	"	"	16	50	66 00	
		⅔	"	quarts	10	50	7 00	
	25.	5½	"	½ gall	16	50	90 75	
		16	"	quarts	10	50	168 00	
	26.	3	"	½ gall	16	50	49 50	
		8	"	quarts	10	50	84 00	
	27.	2½	"	½ gall	16	50	41 25	

		3½	"	quarts	10	50	38 33	
	28.	2⅔	"	"	10	50	28 00	
								674 58
	31.	6½	"	½ gall	16	50	107 25	
		11¾	"	quarts	10	50	123 37	
								230 62
Aug.	1.	7	"	½ gall	16	59	115 50	
		3 10–12	"	quarts	10	50	40 25	
								155 75
249				Amount forward.				
	2.	4 1-12	"	"	10	50	42 87	
		1	"	½ gall			16 50	
	3.	12 10–12	"	quarts	10	50	131 25	
		1½	"	½ gall	16	50	24 75	
	4.	3	"	"	16	50	49 50	
		11⅓	"	quarts	10	50	119 00	
		7⅓	"	pints	8	00	58 66	
								598 28
	7.	6	"	quarts	10	50	65 00	
		4½	"	½ gall	16	50	74 25	
		3	"	pints	8	00	24 00	
	8.	1	"	"			8 00	
		8	"	quarts	10	50	84 00	
		1½	"	½ gall	16	50	24 75	
	9.	9 10–12	"	quarts	10	50	103 25	
		½	"	½ gall	16	50	8 25	
	10.	2½	"	"	16	50	41 25	
		10⅔	"	quarts	10	50	112 00	
	11.	3	"	½ gall	16	50	49 50	
		5⅔	"	quarts	10	50	59 50	
	15.	2½	"	½ gall	16	50	41 25	
		5	"	quarts	10	50	52 50	
	16.	12	"	"	10	50	126 00	
		1	"	½ gall			16 50	
	17.	4	"	"	16	60	66 00	
		10	"	quarts	10	50	105 00	
								1,061 00
	24.	4	gro.	½ gall	16	50	66 00	
		6⅔	"	quarts	10	50	70 00	
	25.	10	"	"	10	50	105 00	
		½	"	½ gall	16	50	24 75	
								265 75
	30.	4	"	"	16	50	66 00	
		9⅕	"	quarts	10	50	98 00	
								164 00
								$9,762 62
250				Amount forward				9,762 62

CR.

By mdze.,

407 gro. glass-stoppers, at $2	$815 44	
Freight	119 53	

Cartage, strapping, &c		115 50	
Nails		24 50	
Breakage		253 02	
Grinder		6 25	
			1,334 24
			$8,428 38
By cash, B R			7,393 34
			$1,035 04

June	5.	⅔ gro. quarts short	$8 33	.....
"		½ gro. ½ gall. "	10 00	.....
"	6.	1-6 gro. quarts short	2 17	.....
"	7.	1 gro. ½ gall. over	.....	20 00
"	29.	⅔ gro. quarts over	.....	8 33
July	6.	¼ gro. quarts short	3 25	.....
"	21.	1 gro. quarts short	10 50	.....
"	26.	⅔ gro. quarts short	7 00	.....
"	27.	½ gro. quarts over	.....	5 25
Aug.	1.	1-6 gro. quarts short	1 75	.....
"	3.	1-6 gro. quarts short	1 75	.....
"	16.	½ gro. quarts short	5 25	.....
"	17.	1 gro. quarts over	.....	10 50

251 *Defendant's exhibit*—10.

[5-cent stamp, canceled, C. G. I., 3-7-66.]

License.—(Confidential.)—C. G. Imlay to S. B. Rowley.

LICENSE.

This is to certify that I, Charles G. Imlay, of the city and county of Philadelphia, State of Pennsylvania, have, this seventh day of March, 1866, licensed S. B. Rowley, of No. 18 North Fifth street, Philadelphia, Pa., with the exclusive use (four hundred gross excepted) of the Hero jar, and the right, but not the exclusive right, (as per agreement dated even date herewith,) to make, procure, and sell any form of fruit-jar, stopper, and metal screw-cap or ring, authorized by letters-patent granted to me by the United States of America, dated 23d day of May, 1865, and antedated December 6th, 1864, provided that the said S. B. Rowley pays therefor monthly to me, the said Charles G. Imlay, or order, a royalty of seventy-five cents per gross for each and every gross of goods sold by virtue of this license; and further provided that the said S. B. Rowley reports monthly from date, under oath, to the said Imlay or his attorney, the number of gross of said goods both ordered and sold; and further provided that the said goods shall be stamped as follows, say "C. G. Imlay's patent, Philadelphia, Pa."

Witness my hand seal this seventh day of March, 1866.

C. G. IMLAY. [SEAL.]

Witness present:
J. W. LEAVITT.

I hereby accept the foregoing license and promise to comply with its terms, and perform the conditions, and make the payments as therein stated and required.

252 Witness my hand and seal this seventh day of March, 1866.

S. B. ROWLEY. [SEAL.]

Witness present:
J. W. LEAVITT.

U. S. PATENT-OFFICE.

Received for record May 8, 1867, and recorded in liber E 9, page 399 of transfers of patents. In testimony whereof I caused the seal of the Patent-Office to be hereunto affixed.

[SEAL.] T. C. THEAKER,
Com. of Patents.

Defendant's exhibit—11.

Agreement.—S. B. Rowley with Chas. G. Imlay—March 8, 1866.

[5-cent stamp, canceled, C. G. I., 3-7-66.]

These articles of agreement, made and entered into this seventh day of March, A. D. 1866, by and between S. B. Rowley, of the one part, and Charles G. Imlay, of the other part, witness:

1. That the said Rowley has agreed, and by these presents does agree, to assign and transfer to the said Imlay all his interest in and to an alleged improvement by Thomas Houghton, of the city of Philadelphia, in the lid and screw cap of fruit-jars, as evidenced by his agreement with said Houghton, of the 21st of April, 1865, a copy whereof is hereto annexed and made part hereof.

2. The said Imlay has agreed, and by these presents does agree, to give said Rowley the exclusive right to manufacture and sell the Hero jar, that is to say, T. G. Otterson patent of November 4, 1862, (with the exception of 400 gross,) and the use, but not the exclusive use, of said Imlay's patent, dated December 6, 1864, and May 23, 1865, and to
253 take the moulds of said Rowley, if in good order, at cost, payable in royalties, and to assume all liability for costs or expenses, and generally to indemnify and hold harmless said Rowley under and by virtue of his said agreement with said Houghton.

3. Said Rowley agrees to make and sell the Hero jar exclusively, and to pay therefor as a royalty to said Imlay 75c. per gross, said Rowley hereby guaranteeing a sale of one thousand gross per season.

4. Settlements for royalties are to be made monthly, and the payments for last year's sale is to be made at the rate of 50c. per gross.

5. The said Imlay agrees to protect the said Rowley against any interference in the manufacture and sale of the Hero jar under this agreement.

6. All goods are to be stamped, "Imlay's patent, Philadelphia."

Witness our hands and seals the day and year first above written.

C. G. IMLAY. [SEAL.]
S. B. ROWLEY. [SEAL.]

Witness present:
JOS. J. DORAN.

[5-cent stamp, canceled, C. G. I., 3-7-66.]

254 *Defendant's exhibit*—13.

[Sole agent and manufacturer of A. Stone & Co.'s improved screw-top fruit-jars; all glass.]

MEDFORD, *February 22d*, 1866.

Mr. C. G. Imlay bought of Lewis Ireland, manufacturer and dealer in

porters, minerals, wines, druggist, and other glassware, Medford, Burlington Co., N. Jersey:

	$	cts.
2 boxes 1-12 and 10-12 gro. qt. Hero jars, @ $17 per gross.....	15	58

Rec'd payment,

LEWIS IRELAND,
Per J. J. A.

P. S.—Shall I make the other gross?

Defendant's exhibit—14.

PHILADELPHIA, *May* 30, 1866.

Mr. Rowley to Breuker & Kessler, Dr.,

(Lithographers, engravers, & printers, Forney's Press building, 7th & Chestnut street. Terms, net cash.)

Engraving and printing 500 fruit-jar cards..... $120 00

255 *Defendant's exhibit*—15.

A TREATISE

ON THE ART OF

PRESERVING FRUITS AND VEGETABLES

HERMETICALLY

IN THE "HERO JAR,"

BY EXPERIENCED PRESERVERS.

Entered according to act of Congress, in the year A. D. 1869, by Salmon B. Rowley, in the clerk's office of the district court for the eastern district of Pennsylvania.

Chase & Town, prs. & stationers, 142 S. Fourth st., Philadelphia.

256 *Treatise on the art of preserving fruit hermetically.*

The owner and proprietor of the Hero fruit-jar, having been frequently solicited by his numerous patrons to prepare a treatise on fruit-preserving so concise and yet so simple that all who read may understand, endeavors, in this brief work, to meet this earnest and increasing demand of the public. It shall be his aim to so educate every housewife in the art of preserving fruit that perfect success shall crown each effort, and failure become a word unknown. To secure this end, the most careful attention to the several points under consideration, as well as the directions and recipes affixed to this work, is required.

The preserving of fruits by hermetically sealing in glass jars or tin cans has increased rapidly in the last eight or ten years, so that to provide a store of fruit and vegetables in their natural condition for winter use is becoming not only a necessity, but is a provident measure, alike conducive to health and pleasure.

The one great aim in preserving fruits is to retain their natural flavor and freshness. To accomplish this object two methods alone have been successful. The first, by placing them in rooms or cases from
257 which all air was exhausted, or in cellars or houses where all circulation of air was excluded, and with a temperature too low to admit of decay. This method failed to meet with general favor, because its inconvenience and expense rendered it entirely impracticable.

The other method consists in a combination of chemical science with mechanical application. Chemistry comes to our aid in expelling the element producing fermentation, and mechanism in protecting from any further contact with it. The agency employed to produce the first effect is heat, and the second the "self-sealing fruit-jar."

But while many succeed in so preserving the fruit as to render it

palatable and in a high degree satisfactory, they fail in retaining the original flavor and freshness. The fruit, if inspected, will be found to be very soft and of a mushy appearance, often falling to pieces, and of an acid flavor, entirely foreign to the natural fruit, while the solidity and original flavor is destroyed.

This may be attributed in part to the imperfection of the jar used, and in part to a superficial knowledge of the process required.

The great secret of success in preserving fruit consists: 1st. In procuring a perfect jar. 2d. Securing ripe, sound, and fresh fruit. 3d. Expelling the oxygen from the fruit. 4th. Safely sealing the jar.

Attention will be directed to each of these three points separately. Consider, 1st, the

SELECTION OF JARS.

In all cases avoid tin cans, as the acid in the fruit will always abstract sufficient taste from the tin to interfere with the flavor.

The testimony of physicians, added to the experience of many, corroborate the belief that acid fruits preserved in tin cans are very unwholesome.

Be careful to avoid any jar where the rubber ring is exposed to the syrup or fruit, as all rubber contains sulphur, which has a tendency to taint the fruit and discolor the syrup.

Of glass jars there are four classes where the joint is formed with a view to make the jar air-tight.

258 Agents and dealers generally, not inquiring into the principal of atmospheric and mechanical pressure, buy cheap and worthless jars, and not understanding the art of preserving fruit, innocently recommend them to their customers, and are obliged, even after their worthlessness is discovered, to continue selling, to save themselves from loss. In order to instruct the dealer and consumer in making their purchases, these four classes will be described, and reasons given for selecting some and rejecting others.

Class 1st. Jars where the rubber ring is laid on top of the jar.

Class 2d. Where the rubber is placed around the outside neck of the jar, and the cover pushed down over the rubber.

Class 3d. Where the rubber and stopper goes on the inside.

Class 4th. This class will be explained in the description of the Hero jar.

Always avoid class 1st, where the rubber ring is laid on the top of the jar, for two reasons: 1st, the rubber comes in direct contact with the fruit, and, secondly, the joint is always made on a ground surface, which necessarily must be rough and unevenly ground, thus preventing a tight joint.

Avoid class 2d, where the rubber is placed around the outside neck of the jar, and the cover pushed down over the rubber, as a great many jars blown in the factory are slightly warped in taking them out of the moulds while the glass is red-hot and in almost a running condition, and, if a bottle is warped, although it may not be perceptible to the naked eye, and cannot be detected by actual measurement, it will interfere with making a tight joint, as the cover, when pressed down, will not conform to the oblong shape of the jar; and for the same reasons avoid class 3d, where the rubber ring and stopper go in the inside of the neck of the jar.

Select a jar that is air-tight, and seals easily and opens easily, so that the cap or stopper may not be injured in opening and rendered useless

for future service. A perfect jar, in this respect, will last eight or ten years.

The Hero fruit-jar possesses all the advantages and none of the disadvantages mentioned above. It makes its joint on a flat shoulder, blown in the glass, on the outside of the mouth of the jar, and below the
259 top. The surface of the shoulder on which the joint is made is perfectly smooth. The rubber being outside, and below the top of the jar, the syrup cannot be exposed to it, to taint and discolor it, at the same time its shoulder, blown in the mould, on which the rubber rests, corresponds with the thread on which the screw fastening works, so that it insures equal pressure on all parts of the cap and rubber ring, thereby insuring a tight joint. It has a metal stopper which is not easily broken by accident, at the same time it is not as liable to be warped in the manufacture as a glass stopper is, and if at any time it should by accident become so in the customer's hands, the peculiar construction of the Hero jar, bringing all the mechanical pressure on the outer edges, and directly over the rubber ring, will always take the warp out of the metal stopper and insure a tight and good joint nevertheless. The caps are all japanned on the inside, so the metal is entirely coated, and cannot corrode, no matter how wet it may be, or how much exposed.

It has a wide mouth, to take in large fruits, which can also be easily removed from the jar without crushing.

This jar has arrived so near perfection that there is no hesitation in warranting every jar to preserve fruit an indefinite space of time, if care is taken in following the directions.

The second point under consideration is the

SELECTION OF FRUIT.

Always be sure that the fruit is perfectly ripe and fresh, and avoid such as is bruised or slightly decayed, for after fruit has once lost its freshness and original flavor, by growing stale and becoming wilted, it cannot be restored.

The 3d important consideration is the

EXPULSION OF AIR.

As before remarked, the agency for expelling air is heat.

There are two methods of employing this agency. One is heating the fruit in the jars, and the other pouring the fruit in the jars after
269 heating. The first method is preferable, because it preserves the form and beauty of the fruit. The second method is used for vegetables and fruit that need much cooking.

Either may be used with equal success.

The fourth and last point of importance is the

SEALING OF THE JARS.

In no way can this be done so easily and effectually as by the use of the Hero jar.

It is the only jar claiming a separate mechanical and atmospheric pressure, yet so simple in its workings that a child can understand and use them.

In offering general directions for the guidance of housekeepers in preserving fruit, it becomes necessary to make some exceptions. While a general rule will apply to solid fruits, berries and fruits that shrink

much when heated require an additional process. Always observe the recipes for each particular fruit.

In preserving small fruits, such as berries, cherries, currants, &c., care must be taken not to mash them in stemming and preparing for the jar, as the bursting of the skins would prevent a clear syrup. Too much cooking would produce the same effect. Always see recipes for time of cooking, and quantity of sugar required to each quart of fruit.

COOKING FRUIT OUTSIDE OF THE JAR.

When the fruit or vegetables are cooked before placing in the jars, two methods are used to prevent breakage: 1st. Immerse the jar in warm water, then in hot water before pouring in the hot fruit. The 2d method is, wet a towel in cold water, double it four or five times, and set the jar in it while pouring in the fruit. The latter, although it appears inconsistent, has been proved by frequent experiments to be a perfect safeguard against breakage.

GENERAL DIRECTIONS.

Fill the jars with fruit as closely as possible; refer to the rec-
261 ipe for the kind of fruit used, and ascertain how much sugar is required; take as much hot water as is necessary to dissolve the sugar; add cold water before pouring into the jar; fill the jar half full with the syrup, put the rubber ring in hot water, wipe the shoulder of the jar clean, apply the rubber ring, put on the cap or stopper, and turn on the screw-ring, but not tight, so that the air may escape as the fruit is heated; set the jars in a boiler on strips of wood or plates, or on a board with holes the size of the jars, so arranged that they will neither touch each other nor the boiler. Fill the boiler with cold water to the neck of the jar, boil as long as required for the kind of fruit used, (see recipe,) take the jars from the boiler, unscrew the ring for a few minutes to let out the steam and hot air, turn on the screw again, set the jar in a cool place, avoiding the draft; when the fruit is nearly cold turn on the screw-ring as tightly as possible; when cool, tighten the ring again and set in a dark, cool place.

2d. If the fruit is to be cooked before putting in the jars, take four quarts of fruit to one pound of sugar, with water enough to keep from burning. Unscrew the metal ring, and put the jars in warm water, add hot water until the jars are quite hot, then fill them with boiling fruit, and seal immediately. Fruit can be preserved without sugar if desired.

3d. To open the Hero jar, remove the metal ring, insert a case-knife under the gum ring, and lift up until the stopper lifts off; it will yield easily. If the screw-ring should unscrew hard, dip it in warm water for a few moments. Care should be taken to wipe the thread on the jar clean before putting on the screw-ring.

Directions for preserving fresh fruit, tomatoes, &c.

TO PRESERVE STRAWBERRIES.

Strawberries, being very juicy, require but little water. Fill the jars as full as possible without crushing the fruit, place in a boiler of cold water; let the water heat, not boil. When reduced one-third of their bulk, remove from the boiler, empty every third jar into the other two, replace in the boiler, boil three or four minutes, unscrew the ring

262 and fill with hot syrup, using only sufficient water to dissolve the sugar, let the steam escape, and seal as directed for other fruits.

ANOTHER.—Use ¾ of a pound of sugar to one pound of fruit, sugar the strawberries and let them stand ten minutes, put in a preserving-kettle and let them boil three or four minutes. Prepare the jars as directed, and seal quickly while the contents are hot.

RASPBERRIES, BLACKBERRIES, GOOSEBERRIES, CHERRIES, & CURRANTS.

Fill the jars compactly with the fruit. Fill one-third full with the syrup, and if they shrink away, fill from one of the jars, and finish as directed for strawberries.

APPLES.

Take well-flavored apples, pare, quarter, and boil till tender, but not to break in pieces. Add sugar to the taste and let the whole boil up once or twice. Fill the jars, and seal.

ANOTHER RECIPE.—Halve and core ripe and tender apples, fill the jar, pour in syrup till the jar is half full, place in a boiler of cold water, boil ten minutes. If there is a vacuum, fill the jar with hot syrup; after standing a short time to settle, seal as before directed.

PEACHES.

Secure fine ripe peaches, pare them, part them in halves, and take out the stones; put them in water as soon as pared to retain the color: fill the jars with peaches packed as closely as possible; add syrup till the jar is half full; place in a vessel of cold water, and boil, (see recipe for time,) and seal according to general directions.

ANOTHER RECIPE.—After preparing the peaches as above, fill the jars first with peaches, then with pure water; boil ten minutes, and seal up hot. When wanted for use, pour off the water, put the peaches in a dish, and sprinkle with sugar an hour before wanted—same as for fresh peaches.

ANOTHER.—Make a syrup, using half a pound of sugar for every pound of fruit. Pare and halve the peaches, boil them five minutes in the syrup, fill the jars, and seal while hot.

263 ANOTHER.—Pare and cut the peaches in halves, put them in a convenient vessel in layers, putting sugar between each layer. Cover the vessel and set it into a boiler of water; let the water boil till the fruit is heated through; then fill the jars, and seal as directed.

QUINCES.

This fruit should be sliced and boiled in water till tender, then fill the jars, add the hot syrup, and seal as directed.

PEARS.

Pears, like peaches and quinces, should be put in cold water immediately after paring, to preserve the color. Let them boil till tender. Fill the jars, and fill with hot syrup; seal immediately.

ANOTHER.—Take good preserving pears, pare and quarter them. Boil in a small quantity of water till tender. Take about one-fourth the quantity of quinces, and prepare in the same way, then put both

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ANOTHER.—Take good preserving pears, pare and quarter them. Boil in a small quantity of water till tender. Take about one-fourth the quantity of quinces, and prepare in the same way, then put both

together, with as much sugar as will sweeten to the taste, into a preserving-kettle, and let them boil three or four minutes. While hot, pour into the jars, and seal. When preserved in the jars, reference should be made to the time-table.

PLUMS.

Make a syrup, using half a pound of sugar to a pound of fruit. Take off the skins; boil the plums in this syrup ten minutes, or until the fruit is tender; fill the jars, and seal hot.

Plums may also be cooked in the jars, and by many is preferred. Fill the jars with plums, and half full of syrup, and place in a boiler of cold water; boil ten minutes, and seal.

TOMATOES.

Scald and remove the skins, place in the jars, reduce and treat as directed for strawberries. Boil from ten to fifteen minutes, fill up, and seal.

ANOTHER.—Take off the skins, put in a preserving-kettle or other convenient vessel without salt, and boil a quarter of an hour; fill the jars, and seal hot.

264 TO CAN WHOLE.—Scald and remove the skin; place in the jars until full. Boil twenty minutes, and at the same time boil some tomatoes in a dish or pan; when ready to seal, fill up the jars with tomatoes and juice from this dish, and seal boiling hot. Tomatoes should be cooked and canned in nothing but their own juice.

PRESERVING VEGETABLES.

To preserve vegetables it is absolutely important to take nothing but that which is fresh from the vine or stalk. If at all withered or decayed, success is impossible.

CORN.—Strip from the cob, put the corn in the jars with the milk of the corn. Put on the cap, and screw on the ring lightly; boil five hours. Very young and tender corn has been preserved by boiling one hour.

ANOTHER.—Cook the corn on the cob, as much as when it is prepared for eating, then cut it off and press it tightly into the jars, put on cap, gum, and ring, and screw down tight; back the ring a half a turn; boil one hour, seal and set away in dry, cool, dark place.

BEANS AND PEAS.—In like manner boiled from four to five hours.

ASPARAGUS.—Boil thirty minutes.

It is recommended to put table-salt, half a teaspoonful, to a quart-jar of fruit, in the boiler of water, and let the water boil until it assumes a milky appearance.

It requires a much longer time to expel all the air from vegetables than from fruit. This fact, not being understood, has caused much failure in attempts to preserve them.

These recipes are designed for pint and quart jars. Larger jars will require a little more cooking.

	Time for boiling fruits.	Quantity of sugar to quart.
Cherries	5 min.	6 ounces.
Raspberries	6 "	4 "
Blackberries	6 "	6 "
265 Strawberries	8 "	8 "
Plums	10 "	8 "
Whortleberries	5 "	4 "
Pie-plant, sliced	10 "	10 "
Small sour pears, whole	30 "	8 "
Bartlett pears, in halves	20 "	6 "
Peaches	8 "	4 "
Peaches, whole	15 "	4 "
Pine-apple, sliced	15 "	6 "
Siberian or crab apple	25 "	8 "
Sour apples, quartered	10 "	6 "
Ripe currants	6 "	8 "
Wild grapes	10 "	8 "
Tomatoes	20 "	none.
Gooseberries	8 "	8 ounces.
Quince, sliced	15 "	10 "

266 Howson's United States and foreign patent-offices. Proprietors: H. Howson, solicitor of patents; C. Howson, attorney at law. Forrest Buildings, 119 South Fourth street, Philadelphia; Marble Buildings, 460 Seventh street, opposite U. S. Patent-Office, Washington, D. C.

All communications to be addressed,

MESSRS. HOWSON,
Philadelphia.

Special attention given to the prosecution of rejected applications for patents.

267 *Defendant's Exhibit* 16.

The U. S. Patent-Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters-patent granted Thomas G. Otterson, dated November 4th, 1862, No. 36853, for improved "fruit-jar."

In testimony whereof I, M. D. Leggett, Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-eighth.

[SEAL.]

M. D. LEGGETT,
Commissioner.

No. 36853.

The United States of America to all to whom these letters-patent shall come:

Whereas Thomas G. Otterson, of Millville, New Jersey, has alleged that he has invented a new and useful improved fruit-jar, which he

states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said invention, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said invention, and praying that a patent may be granted for that purpose:

268 These are, therefore, to grant, according to law, to the said Thomas G. Otterson, his heirs, administrators, or assigns, for the term of seventeen years from the fourth day of November, one thousand eight hundred and sixty-two, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention, a description whereof is given in the words of the said Thomas G. Otterson in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent-Office has been hereunto affixed.

Given under my hand, at the city of Washington, this fourth day of November, in the year of our Lord one thousand eight hundred and sixty-two, and of the Independence of the United States of America the eighty-seventh.

[SEAL.]

CALEB B. SMITH,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent-Office.

D. P. HOLLOWAY,
Commissioner of Patents.

The schedule referred to in these letters-patent, and making part of the same.

To all whom it may concern:

Be it known that I, Thomas G. Otterson, of Millville, in the county of Cumberland and State of New Jersey, have invented certain new and useful improvements in air-tight glass jars, for preserving fruit, vegetables, &c.; and I do hereby declare that the same are described and represented in the following specifications and drawings.

To enable others skilled in the art to make and use my improvements, I will proceed to describe their construction and the mode of using them, referring to the drawings, in which the same letters indicate like parts in each of the figures.

269 Fig. 1 is an elevation of the jar.

Fig. 2 is a central section.

Fig. 3 shows the under side of the cover.

The nature of my invention and improvements in air-tight jars consists in the combination and arrangement of devices hereinafter described.

In the accompanying drawings A is a cylindrical glass jar made in the form shown in the drawing or in such other form as will answer the purpose. About three-eighths of an inch below the top I make a collar or flange, B, around the top of the jar. This flange forms a rabbet to receive the packing C of India rubber or other materials, upon which packing the edge D of the cover E rests or sits when the jar is closed. The cover E is made in the form shown in the drawing, with its lower

edge bevelled from F, so that the edge D, which is pressed into the packing by the pressure of the air on the outside of the cover, is between an eighth and a sixteenth of an inch wide, as shown in Fig. 3 of the drawings.

Making the edge of the cover thin is a very great improvement, as it takes far less pressure on the cover to press it into the gum and make it tight. Just above the flange B I make a groove, G, (see Fig. 2,) to receive the inner edge of the packing C, so that, as the cover is pressed down, it forces the packing into the groove and helps to make it tight. This groove is a very great and important improvement, as it allows a greater width of packing inside of the edge of the cover, thereby preventing the pressure on the cover from forcing the packing out from between the cover and the flange. The screw-clamp H may be applied when the jar is filled and hot; after it has cooled the clamp may be removed and applied to another jar.

I believe I have described and represented my improvements in air-tight glass jars for preserving fruit and vegetables so as to enable any person skilled in the art to make and use them. I will now state what I desire to secure by letters-patent.

In combination with a glass jar having a rabbet around the top
270 or mouth on the outside, I claim a glass cover, shutting over on to the rabbet or the packing on the rabbet, substantially as described.

THOMAS G. OTTERSON.

Witnesses:
JAMES SMITH.
RICHARD L. W. HAY.

Defendant's exhibit 17.

PHILADELPHIA, *July* 6, 1865.

T. G. OTTERSON, Esq.:

SIR: I have your letter of yesterday, but not the new jar, as stated by you. The stage-man, I believe, forgot it. I also want badly those other jars that I spoke to you about. Can't you send them to-morrow with the new jar? You must help start the movement all you can.

Both the ½-gallon and qt. mould will go down to-day. The neck of the ½-gallon mould was not bored out the shape that we proposed, owing to the fact that in boring they encountered sand-holes an' had to turn them out. Now, then, send up the new jar and the old ones to-morrow, and samples on Monday from the two moulds sent to-day. The 3-pint and the pint mould did not arrive this a. m. Please push ahead with every possible dispatch.

Truly,

C. G. IMLAY.

William has already taken a plaster-cast of the neck of the ½-gallon mould, and will have caps or rings ready by the time samples come up.

You may blow as many qts. as you choose, provided they blow all right in your opinion.

Defendant's exhibit 18.

PHILADELPHIA, *July* 13, 1865.

T. G. OTTERSON, Esq.:

271 SIR: We were glad to receive your samples, but there is the slightest difficulty somewhere about the joint which prevents

them from working. It is therefore necessary to have the moulds here immediately for alteration. William thinks it will require a little conference between you and he. You appear to have inspired him with as much confidence in your mechanical skill as you have me. I think, therefore, you had better accompany the moulds, and as I am very anxious to get ready for business. You will observe that your interest can be best consulted by your prompt personal attention hereto.

May we see you with the moulds to-morrow? They can, I think, after you and William decide, be altered in two or three hours, or less, and we can get samples blown here.

Very truly,

C. G. IMLAY.

Leave the moulds at Market st., and come directly to my house, and William will show you the operation of the new samples.

Defendant's exhibit 19.

PHILADELPHIA, *Aug.* 3, 1865.

FRIEND OTTERSON: I have the promise of jar alterations this week. Did you send all the stopper mould pieces? I begin to fear that the glass folks will not conclude in season to blow me jars.

I want to see Ireland or Porter immediately; or perhaps, rather, I would like to know upon what terms the Port Elizabeth works could be had, and you to superintend them. I must know something pretty soon, or I shall, I fear, get in a passion.

William has pretty much finished his tools for caps, and I tell you they do work sweetly on the ½-gallon jar. I consider this mould now worth 40 times it' cost.

We shall proceed to have the others altered in like manner, as suggested in my letter of yesterday.

We think of adopting for our atmospheric cover the narrow and not the broad-shoulder stopper. I think it requires too much power to make a joint with the broad-shoulder stopper.

272 I have asked William to mail you one of his rings. The metal, of course, is a little too light, but they work splendidly.

Truly,

IMLAY.

☞ Upon what terms can the Port Elizabeth works be had?

J.

Defendant's exhibit 20.

PHILADELPHIA, *August* 7, 1865.

T. G. OTTERSON, Esq.:

SIR: I have yours of the 4th inst. Munn & Co. have, and have had, all the money they call for for services. Why the application-paper for signature does not arrive cannot be accounted for except for the "rotation" reasons before stated. I send them money and urge them forward. To put through the jar to a patent has, you will observe, all the support I can give it. Suppose you run over and see them.

In regard to mould for ring and moulds for jars and stamped covers, both as to size and forms, you must put your wits to work, as in this respect I shall, of course, depend entirely upon your mechanical skill. All I have to say is, be ready when the time arrives.

I like your Porter idea so well that I have sent him an appointment to meet me, as I cannot get the glass-men here to state prices.

You can send patent paper whenever convenient.

Do I understand you to say that Porter's factory could not blow jars at once?

Wm. sent you a ring. It may get bent in carrying by mail. Those we have—only a few samples—work beautifully.

I will call on Townsend to-day.

If we use the cap on all the jars no grinding-machine will be required to grind the joints.

The price of the mould for ring was stated at $25.

In regard to trusting me, the truth is we must trust each other and aid each other, and if we trust each other and aid each other we
273 deserve success, and as a general thing we shall obtain it. I shall do all I can, never doubting Mr. Otterson's willingness to do otherwise. I have but three objects in view, viz, to benefit each other and accommodate the public.

Truly, yours,

C. G. IMLAY,
Box 1261.

Defendant's exhibit 10.

(Copy.—J. P. L., No. 1.)

License.—C. G. Imlay to S. B. Rowley. (Confidential.)

LICENSE.

[5-cent. nter.-rev. stamp.]

This is to certify that I, Charles G. Imlay, of the city and county of Philadelphia, State of Pennsylvania, have, this seventh day of March, 1866, licensed S. B. Rowley, of No. 18 North Fifth street, Philadelphia, Pa., with the exclusive use (four hundred gross excepted) of the "Hero" jar, and the right, but not the exclusive right, (as per agreement dated even date herewith,) to make, procure, and sell any form of fruit-jar, stopper, and metal screw cap or ring, authorized by letters-patent granted to me by the United States of America, dated 23d day of May, 1865, and antedated December 6th, 1864, provided that the said S. B. Rowley pays therefor monthly to me, the said Charles G. Imlay, or order, a royalty of seventy-five cents per gross, for each and every gross of goods sold by virtue of this license; and further provided that the said S. B.
274 Rowley reports monthly from date, under oath, to the said Imlay, or his attorney, the number of gross of said goods both ordered and sold; and further provided, that the said goods shall be stamped as follows, say "C. G. Imlay's patent, Philadelphia."

Witness my land and seal this seventh day of March, 1866.

C. G. IMLAY. [SEAL.]

Witness present:
W. A. LEAVITT.

I hereby accept the foregoing license, and promise to comply with its terms, and perform the conditions and make the payments as therein stated and required.

Witness my hand and seal this seventh day of March, 1866.

S. B. ROWLEY. [SEAL.]

Witness present:
W. A. LEAVITT.

(Endorsed:)

U. S. PATENT-OFFICE.

Received for record, May 8, 1867, and recorded in liber E 9, page 399, of Transfers of Patents.

In testimony whereof I have caused the seal of the Patent-Office to be hereunto affixed.

[SEAL.]

T. C. THEAKER,
Com. of Patents.

This is a true copy of the original offered in evidence before me.

W. GRIER HIBLER,
Examiner.

275 *Defendant's exhibit* 20.

Agreement.—S. B. Rowley with Chas. G. Imlay.—March 8, 1866.

[5-cent. inter.-rev. stamp.]

These articles of agreement, made and entered into this seventh day of March, A. D. 1866, by and between S. B. Rowley of the one part, and Charles G. Imlay of the other part, witness:

1. That the said Rowley has agreed, and, by these presents, does agree, to assign and transfer to the said Imlay all his interest in and to an alleged improvement by Thomas Houghton, of the city of Philadelphia, in the lid and screw-cap of fruit-jars, as evidenced by his agreement with said Houghton of the 21st of April, 1865, a copy whereof is hereunto annexed and made a part hereof.

2. The said Imlay has agreed, and by these presents does agree, to give said Rowley the exclusive right to manufacture and sell the "Hero" jar; that is to say, T. G. Otterson patent of November 4, 1862, (with the exception of 400 gross,) and the use, but not the exclusive use, of said Imlay's patent, dated December 6, 1864, and May 23, 1865, and to take the moulds of said Rowley, if in good order, at cost, payable in royalties, and to assume all liability for costs or expenses, and generally to indemnify and hold harmless said Rowley under and by virtue of his said agreement with said Houghton.

3. Said Rowley agrees to make and sell the "Hero" jar exclusively, and to pay therefor as a royalty, to said Imlay, 75c. per gross, said Rowley hereby guaranteeing a sale of one thousand gross per season.

4. Settlements for royalties are to be made monthly and the payments for last year's sale is to be made at the rate of 50c. per gross.

276 5. The said Imlay agrees to protect the said Rowley against any interference in the manufacture and sale of the "Hero" jar under this agreement.

6. All goods are to be stamped "Imlay's patent, Philadelphia."

Witness our hands and seals the day and year first above written.

C. G IMLAY. [SEAL.]
S. B. BOWLEY. [SEAL.]

Witness present:
JAS. J. DORAN.

[5-cent. inter.-rev. stamp.]

This is a true copy of the original offered in evidence before me.

W. GRIER HIBLER,
Examiner.

Exhibit No. 21.

PHILAD'A, *Aug.* 8, 1865.

T. G. OTTERSON, Esq.:

SIR: I understood Wm. to say the other day that the three moulds had arrived; instead of that, it was they had not arrived—neither have they yet. This is a very great disappointment to me, beside the delay, which I cannot afford in view of my license obligation to you. I had arranged with Mudey & Yolke to complete them, but of course nothing can be done. It appears that the stageman gave the order to somebody, but that somebody has not responded. What's to be done? The delay is not mine.

Truly,

C. G. IMLAY.

277 *Exhibit No.* 22.

PHILADA., *Aug.* 11, 1865.

T. G. OTTERSON, Esq.

SIR: I have yours of the 9th inst.

I wrote to Porter ten days since, and suggested an interview. I, however, heard nothing from, so William and I took the train yesterday and went down at an expense of 3 or $4 to see him, but found him absent in this city. I left a note requesting him to say when and where I could meet him. I have not heard from him, and I think it a little strange.

I my first letter I told him that I wrote at your suggestion, and I think you told me that lately he had written you to come and work for him.

The moulds have not yet arrived, neither stopper nor jar. If, therefore, I could get them blown I would be behindhand with the different sizes. The ½-gallon jar, with screw and ring, works as perfectly as anything could be desired to do. I begin to think that there is no such thing as failure in them. The pints received from Ireland, with clamps, are hard to manage.

Townsend is expected in town to-morrow, when I hope to see him.

I am a little out of patience with Porter.

Truly, yours,

C. G. IMLAY.

Exhibit No. 23.

PHILADA., *Aug.* 12, 1865.

T. G. OTTERSON, Esq.

SIR: I think Porter is not treating me with the common courtesy
278 due to trade. If he does not desire orders or to rent his hollow-ware furnace he could and ought to say so, at least. I have been for two weeks relying upon the expectation to be able to make some arrangement with him by which we could get immediately some stock for sale.

Can you do anything to help this matter along with Porter? He has written you to come and work for him, and I think perhaps that in view of that fact a letter from you to him upon the subject might effect some result. My patience, however, is nearly exhausted. I could, I think, retail in this city 1,000 gross of your jars by the 1st of Oct., were they on hand now, as I had hoped they would be. The jar-moulds arrived this morning, but we can do nothing without the stopper part as well, and which did not arrive.

I had an interview this morning with Mr. Townsend, and am seriously considering a purchase of the works at Port Elizabeth. This, however, you must not mention, or it may defeat the object in view. The question has to be very nicely managed to get possession before next July.

I have altered the quart mould so that perhaps you would not recognize it. The thread is on, and shall put it on all the moulds.

I have named your jar the "Hero," and herewith I send you a circular which tells the whole story, and hope it may meet with your approval. The engraver did not fully represent the ring and stopper, as I observe the top of the stopper does not (as it should) in the cut rise a little above the ring, but practically that is a matter of no importance.

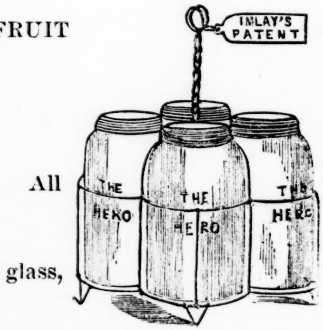
Truly,

C. G. IMLAY.

279 *Defendant's Exhibit* 24.

THE PATENT

HERO

FRUIT 

JARS.

The Hero jars challenge and defy all competition. Mark the effective simplicity of their performance; any child can use them. The fruit is placed in the jar and properly heated, when the cover is applied, and it seals itself.

GENERAL DIRECTIONS.

1st. Fill the jars (with the gum ring on the shoulder) nearly full with fruit and sirup, and set them on strips of wood, wire, &c., in a vessel of cold water to the neck of the jars, and boil the water until the fruit boils in the jars; then remove the jars to the table, and place the stopper quickly on. To provide against atmospheric changes the metal rings may be screwed tightly down on the stopper as the jars cool; and when the jars are cold, screw them down again, and set the jars away in a dry, cool, dark place.

2d. Be careful to notice that the shoulders of the jars and stoppers, as well as the gum ring, are clear of all obstructions.

3d. To open the Hero jars, remove the metal ring, and insert case-knife under gum ring, and lift up until the stopper lifts off. It will yield easily.

280 REMARKS.

The advantages which attach to the Hero jar are: that if the fruit put up is sound, it will not be lost by any imperfection in the jar. In nine cases out of ten the loss of fruit is the result of imperfect jars. The Hero jar is the most perfectly air-tight jar ever presented to the public, and challenge any and all jars to a trial of its merits by any test.

Were the public aware of the convenience afforded by the use of the patent jar holder or cooker, nothing would induce them to put up fruit without it. Its cost is nearly nothing, and it will last for years, and will accommodate itself to almost any form of jar on the market.

It obviates the use of strips of wood, &c., the handling of jars when hot, the usual breakage when entering, while in, and when taken out of the water. The above cut represents the holder or cooker with jars inserted.

For sale by

Exhibit No. 26.

Defendant's Exhibit No. 34.

The U. S. Patent-Office to all persons to whom these presents shall come, greeting:

281 This is to certify that the annexed is a true copy, from the records of this office, of the letters-patent granted N. S. Gilbert, dated December 17th, 1861, No. 33938, for improved preserve-jar.

In testimony whereof I, M. D. Leggett, Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this eighteenth day of July, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-eighth.

[SEAL.] M. D. LEGGETT,
Commissioner.

No. 2934.

Whole No. 33938.

The United States of America to all to whom these letters-patent may come:

Whereas N. S. Gilbert, of Lockport, New York, has alleged that he has invented a new and useful improved preserve-jar, which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said jar, and that the same hath not, to the best of his knowledge and belief, been previ-

ously known or used; has paid into the Treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said jar, and praying that a patent may be granted for that purpose:

These are, therefore, to grant, according to law, to the said N. S. Gilbert, his heirs, administrators, or assigns, for the term of seventeen years from the seventeenth day of December, one thousand eight hun-
282 dred and sixty-one, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said jar, a description whereof is given in the words of the said N. S. Gilbert in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent-Office has been hereunto affixed, Given under my hand, at the city of Washington, this seventeenth day of December, in the year of our Lord one thousand eight hundred and sixty-one, and of the Independence of the United States of America the eighty-sixth.

[SEAL.] CALEB B. SMITH,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent-Office.
D. P. HOLLOWAY,
Commissioner of Patents.

The schedule referred to in these letters-patent, and making part of the same.

Be it known to all whom it may concern:

That I, N. S. Gilbert, of Lockport, county of Niagara, and State of New York, have invented several new and useful inventions and improvements in the construction of jars for preserving fruits, &c., do hereby declare that the following is a full, clear, and accurate description of the same, reference being had to the accompanying drawings, and the letters of reference marked thereon.

The jar itself, in form and material, resembles those in common use, the difference consisting in the simple device by which the air is excluded and the contents secured from fermentation.

Fig. 1 represents a vertical section of the jar; the letters C C exhibit an enlargement of the upper part of the neck, the lower side of which may be properly termed an inverted inclined plane. At the points
283 E E, Fig. 2, this plane is separated into two divisions, the space between them being sufficient to admit the bail (D) with its wedge-like projections b b to pass over the mouth of the jar and be in position to perform its appropriate office, which is done by giving it a turn from right to left.

Fig. 2 gives a plan view of the bail D, which is firmly inserted at top into the rim B; this rim, deriving its motion from the bail, presses down the stopper A upon the gum-elastic strip placed around the mouth of the jar, and accomplishes successfully the object intended. In order to prevent the separation of the bail D from the stopper A, the stopper has a neck surmounted by an elliptical-shaped button, which, being held obliquely, can be made to pass through the circular hole E in the top of the bail, and thus become attached until disunited by a similar oblique motion.

Having thus fully described my invention, what I claim, and desire to secure by letters-patent, is the combination of the bail D with its wedge-like projections b b, the stopper A with its elliptical button, and the mouth of the jar, as specified, the whole being arranged and used as and for the purpose set forth.

N. S. GILBERT.

Witnesses:
M. L. BURRELL.
GEO. BURGESS.

Exhibit No. 35.

The U. S. Patent-Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy, from the records of this office, of the re-issued letters-patent granted S. B. Rowley, assignee of N. S. Gilbert, dated September 1st, 1868, No. 3111, for improved fruit-jar.

284 In testimony whereof I, M. D. Leggett, Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this sixth day of August, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-third.

[SEAL.]

M. D. LEGGETT,
Commissioner.

No 3111. Re-issue.

The United States of America, to all to whom these letters-patent shall come:

Whereas S. B. Rowley, of Philadelphia, Pennsylvania, assignee of N. S. Gilbert, has alleged that said N. S. Gilbert invented a new and useful improved fruit-jar, (for which letters-patent were issued to him, dated December 17, 1861, which letters having been surrendered by said assignee, the same have been cancelled, and new letters ordered to issue to him on an amended specification,) and had made oath that he was a citizen of the United States, that he did verily believe he was the original and first inventor or discoverer of said invention, and that the same hath not to his knowledge and belief been previously known or used; said assignee having paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor:

These are, therefore, to grant to the said S. B. Rowley, his executors, administrators, or assigns, for the term of seventeen years from the seventeenth day of December, one thousand eight hundred and sixty-one, the full and exclusive right and liberty of making, using, and vending to others to be used, the said invention, a description whereof is given in the annexed schedule, and made a part of these presents.

285 In testimony whereof I have caused these letters to be made patent and the seal of the Patent-Office to be hereunto affixed.

Given under my hand, at the city of Washington, this first day of September, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States of America the ninety-third.

W. T. OTTO,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

ELISHA FOOTE,
Commissioner of Patents.

UNITED STATES PATENT-OFFICE.

S. B. Rowley, of Philadelphia, Pennsylvania, assignee of N. S. Gilbert. Letters-patent No. 33938, dated December 17, 1861; reissue No. 3111, dated September 1, 1868. Improved fruit-jar.

The schedule referred to in these letters-patent, and making part of the same.

To all whom it may concern:

Be it known that I, S. B. Rowley, of Philadelphia, Pennsylvania, am the owner of certain letters-patent, granted on the 17th day of
286 December, 1861, to N. S. Gilbert, of Lockport, New York, for an improved preserve-jar; and I do hereby declare the following to be a full, clear, and exact description of the same:

The invention of the said N. S. Gilbert consists—

Firstly, of a jar, having an exterior shoulder arranged below the mouth for the reception of a cover and packing-ring, substantially as described hereafter.

Secondly, in the combination of a bail, or its equivalent, with a cover adapted to the mouth of a jar, and to an exterior shoulder below the said mouth, all substantially as hereafter explained.

In order to enable others skilled in the art to carry out this invention, I will now proceed to describe a mode of constructing the same, reference being had to the accompanying drawing, which forms a part of this specification, and in which—

Figure 1 is a vertical section of a jar with my improvement.

Figure 2, a plan view.

In fig. 1 is represented a jar, having below its mouth an exterior shoulder for receiving a gasket or packing of gum-elastic or other like material. In the present instance, this exterior shoulder is situated above a flange or enlargement, c, on the neck of the jar, and this enlargement is flattened at e e, to admit the projections b b of the bail D.

The cover A a has a flange, fitting loosely over the mouth of the jar, and bearing on the packing-ring, which rests on the above-mentioned exterior shoulder. In the centre of the cover is a projection, g, terminating in an elliptical button, which, when the cover is held obliquely, will pass through a central opening in the bail, the button, however, serving to confine the bail to the cover when the two occupy their proper relative positions.

The central projection of the cover is such, however, that the bail is permitted a limited vertical play, independently of the said cover.

The bail and cover being thus connected together, the latter is so adjusted to the jar that its flange will overlap the neck of the same, and bear on the packing-ring, and the bail is so adjusted that its projections shall pass down the flattened portions of the flange or enlarge-
287 ment c of the jar. The bail is now turned, so that its projection b shall pass beneath and in contact with the inclined planes formed beneath the said flange or enlargement c, and thus the bail will be depressed, and will exert a pressure on the cover, between which and the exterior shoulder the packing-ring will be so compressed as to form a perfectly tight joint.

It will be seen that what has been termed the bail, D, consists, in the present instance, of a ring, on the inner edge of which are the two projections c c, the ring being connected by arms to a central hub, through which passes the projection of the cover A, as described above.

On turning the bail, it has a screw-like action on the jar, and either depresses the cover or relieves the same from pressure, according to the direction in which it (the bail) may be turned, this turning of the bail imparting no motion to the cover, excepting a vertical one, hence no torsion is imparted to the packing-ring.

It will be evident, however, that this so-called bail may be modified, both in form and construction, the only requisite being that it shall bear on the cover, and shall be arranged for a screw-like action on the jar at a point below the shoulder, on which the packing-ring rests, the sole object of the bail or its equivalent being the depression of the cover without turning the same.

The most important feature of this invention is the exterior shoulder arranged below the mouth of the jar for the reception of the packing-ring and cover.

Two important ends are attained by this arrangement: first, it affords facilities for easily introducing the ring to and retaining it in its place; second, the ring is maintained free from contact with the contents of the vessel, to which it would otherwise impart an unpleasant taste.

I claim as the invention of the aforesaid N. S. Gilbert—

1. A jar, having a shoulder on the neck, below the mouth, a flanged cap, which overlaps the neck, and a packing, which is compressed between the shoulder and the cap, substantially as set forth.

2. The combination of a cover, A, adapted to the mouth of a jar and to a packing on an exterior shoulder below the mouth, with a bail,
288 D, or its equivalent, arranged to have a screw-like action on the jar, below the said shoulder, all substantially as described.

In testimony whereof I have signed my name to this specification before two subscribing witnesses.

S. B. ROWLEY.

Witnesses:
H. HOWSON.
C. B. PRICE.

Defendant's exhibit 39.

The U. S. Patent-Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this Office of the letters-patent granted Charles G. Imlay, dated May 23d, 1865, No. 47834, for improvement in fruit-jars.

In testimony whereof I, J. M. Thacher, Acting Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this twenty-first day of June, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-seventh.

[SEAL.]

J. M. THACHER,
Acting Commissioner.

No. 47834.

The United States of America to all to whom these letters-patent shall come:

289 Whereas Charles G. Imlay, of Philadelphia, Pennsylvania, has alleged that he has invented a new and useful improvement in

fruit-jars, which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe that he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said improvement and praying that a patent may be granted for that purpose:

These are, therefore, to grant according to law, to the said Charles G. Imlay, his heirs, administrators, or assigns, for the term of seventeen years from the sixth day of December, one thousand eight hundred and sixty-four, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Charles G. Imlay, in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent-Office has been hereunto affixed.

Given under my hand, at the city of Washington, this twenty-third day of May, in the year of our Lord one thousand eight hundred and sixty-five, and of the Independence of the United States of America the eighty-ninth.

[SEAL.]

W. T. OTTO,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent-Office.

D. P. HOLLOWAY,
Commissioner of Patents.

290 The schedule referred to in these letters-patent, and making part of the same.

To all whom it may concern:

Be it known that I, Charles G. Imlay, of the city and county of Philadelphia, in the State of Pennsylvania, have invented certain improvements in fruit-jars and other vessels for preserving fruits or similar substances, and I do hereby declare that the following is a full and exact description thereof, reference being had to the annexed drawings and to the letters of reference marked thereon.

1st. My objects are twofold. The first is securely to lock the main or principle joint of the jar, the only joint where no aperture is used. For this I make three forms of my cap: a sheet-metal screw-cap, a sheet-metal or cast slotted cap, and a glass screw cap, each being fitted to corresponding parts of the jar.

2nd. To make a series of stoppers adapted to my uses of them.

In figure 1, a is the jar, b a stopper, with an aperture closed by the India-rubber plug z; the joint between the glass stopper and the jar is made air-tight by the gasket d, which has no necessary contact with the metal cap c, the only use of the cap being to hold the stopper in firm contact with the jar by the screw-thread mutually made on the jar and cap.

Figure 2 is another variety of my metal cap, used for the same purpose as stated, the glass stopper being locked to the jar by means of knobs or lugs on short portions of screw-threads, operating in two or more inclined slots, l. A secondary variety of this cap is seen at 2 x, in which case no glass stopper is used, but the gasket is compressed directly by the cap.

In figure 4, c, at the left hand, exhibits the top of the cap of figure 1, and to it are fitted the glass stoppers of all the series, except figure 3. Figure 3 is the same device as in figure 1, made either with or without the cup and plug b and e, but the stopper and capping screw edges are cast in one piece of glass; and, for the sake of brevity, these stoppers may be classed as two varieties, those without aperture or apertures, as are b a, b b, and b c, of which still others may be given, and those
291 with one or more apertures, as are the figures b d, b e, b f, b h, b i, b k, and b x, and the use of each is apparent to adepts in the art of preserving, some rising above the caps, some being below, some excluding the air at the edges, others in part at the edges, and the rest of the air at the aperture or apertures. The stoppers b h, b k, and b x deserve notice as having their apertures locked by screw-plugs with rubber rings, b h being solid, b k a tube or tubular through the screw-rod, with or without the hole in the rod, or, as indicated by the red dotted lines in the glass stopper, for the purpose of using the full capacity of the cup, and b x has two holes at the base of the plug for the same purpose.

The use and adaptation of my invention to fruit and other preserving is apparent to those skilled in the art to which it appertains.

CLAIM.

1st. I claim the use of the metal screw-cap c for the purpose of locking any form or variety of glass stopper upon a glass jar, as described.

2nd. I claim the glass stopper and cap b j, when fastened by screw-thread to the jar, in the manner described.

3rd. I claim a metal cap, where, by inclined slots in the cap, and by projections or lugs, or portions of a screw-thread on the neck of a jar, it locks a glass stopper to a glass jar, and the same when no glass stopper is used.

4th. I claim the use of the hollow-tube plug b k and plug b x, (with two apertures at its base,) for locking the aperture inside of the jar, as described.

5th. I claim all and each of the described and figured stoppers, when used in combination with my locking-caps.

C. G. IMLAY.

Witnesses:
SAMUEL J. PARKER.
W. L. IMLAY.

292 *Defendant's exhibit No.* 41.

The U. S. Patent-Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy, from the records of this office, of the letters-patent granted William T. Gillinder and Edwin Bennett, dated August 8th, 1865, No. 49256, for improvement in fruit-jars.

In testimony whereof I, M. D. Leggett, Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this twenty-fourth day of September, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-eighth.

[SEAL.] M. D. LEGGETT,
Commissioner.

No. 49256.

The United States of America to all to whom these letters-patent shall come:

Whereas William T. Gillinder and Edwin Bennett, of Philadelphia, Pennsylvania, have alleged that they have invented a new and useful improvement in fruit-jars, which they state has not been known or used before their application; have made oath, the said Gillinder that he is a subject of the Queen of Great Britain, and the said Bennett that he is a citizen of the United States; that they do verily believe that they are the original and first inventors or discoverers of the said improvement, and that the same hath not, to the best of their
293 knowledge and belief, been previously known or used; have paid into the Treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissloner of Patents, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose:

These are, therefore, to grant, according to law, to the said Gillinder and Bennett, their heirs, administrators, or assigns, for the term of seventeen years from the eighth day of August, one thousand eight hundred and sixty-five, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said Gillinder and Bennett in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent-Office has been hereunto affixed. Given under my hand, at the city of Washington, this eighth day of August, in the year of our Lord one thousand eight hundred and sixty-five, and of the Independence of the United States of America the ninetieth.

[SEAL.] W. G. OTTO,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent-Office.

D. P. HOLLOWAY,
Commissioner of Patents.

The schedule referred to in these letters patent, and making part of the same.

To all whom it may concern:

Be it known that we, William T. Gillinder and Edwin Bennett, of the city and county of Philadelphia, and State of Pennsylvania, have made a new and useful improvement in fruit-jars, and we do hereby declare the following to be a full, clear, and exact description of the nature,
294 construction, and operation of the same, reference being had to the accompanying drawing, (which is made part of this specification,) and in which—

Fig. 1 is a vertical central section of the jar, with the cover in situ.

Fig. 2 is a perspective view of the jar.

Fig. 3 is a perspective view of the cap.

Fig. 4 is a sectional view of the cover.

Similar letters refer to like parts in the different figures.

Our improvement consists of a grooved glass cover, containing a ring of elastic material, which is pressed down upon and partially around the upper edge of the jar or bottle by means of the screw-cap.

To enable those skilled in this branch of manufacture to construct the same, and to indicate the mode of using the same, we will proceed to describe it:

A is the glass jar or bottle, which is a mere question of shape, and B is a glass cover, which has an annular groove, C, on its lower face, of such a conformation as to have two shoulders, D D, and a central depression, E, which agrees in diameter with that of the upper projecting edge F of the jar. The upper exterior portion of the neck of the jar is provided with threads, G G, which correspond with those in the screw-cap H. The ring K, of India rubber or other elastic substance, is laid within the groove C upon the shoulders D D and spanning the depression E, as shown in Fig. 1.

The operation is as follows: The jar being filled with fruit in the proper manner, or to the satisfaction of the operator, the cover containing the elastic annular pad within its groove is laid upon the upper edge of the jar, and the screw-cap being placed over and rotated, is thereby drawn down with its flange H upon the cover B, so as to press the latter down and compel the edge F to project the ring into the depression E, (see Fig. 4,) and embrace a portion of the sides of the flange F as well as its top. This makes the packing much more effective, as the bearing is more extensive, and a leakage from the presence of a small flaw on the upper edge is not so imminent.

295 The bottle is unclosed by simply unscrewing the cap H and raising the cover. The general appearance of the jar when closed is neat and tasteful, and they may be readily wiped off to remove the dust in the sale-room, or the store-room of the housewife, as well as any drip that has fallen upon them in the act of filling. In this respect they contrast favorably with many wire and yoke devices which are before the people. The elastic pad when the cover is detached remains within the groove and does not require special manipulation to place it in position, as the shoulders and sides of the groove are in contact with it, and thus it is prevented from being lost, and great time is saved and accuracy attained by always compelling it to maintain its proper position without special manipulation to fit it over the place it is to occupy.

Though not an absolute necessity, I prefer to have the elastic pad occupy the groove in the cover from the shoulders outward, so as to make them come flush with the lower face of the cover, which makes a neat finish and enables them to be readily wiped off before being placed in contact with the edibles in the jar.

Having thus described our invention, we state that we do not claim broadly the use of a screw-cap cover and elastic ring, but what we claim therein as new and desire to secure by letters-patent is—

The formation of the groove in the cover with shoulders supporting the elastic pad, and with a central depression into which the pad is forced by the upper edge of the jar on the downward pressure on the cover by the screw-cap, substantially as described.

To the above specification of our improvement in fruit-jars we have signed our names this twenty-ninth day of April, 1865.

WILLIAM T. GILLINDER.
EDWIN BENNETT.

Witnesses:
DANIEL GALDY.
JAMES GILLINDER.

296 *Defendant's exhibit No. 42.*

The United States Patent-Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters-patent granted T. H. and S. A. Whitney, dated June 12th, 1866, No. 55581, for "improved fruit-jar."

In testimony whereof I, M. D. Leggett, Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this twenty-fifth day of September, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-eighth.

[SEAL.] M. D. LEGGETT,
Commissioner.

The United States of America to all to whom these letters-patent shall come:

Whereas John Focer, of Glassboro', New Jersey, has alleged that he has invented a new and useful improved fruit-jar, (he having assigned his right, title, and interest in said invention to T. H. and S. A. Whitney, of the same place,) which he states has not been known or used before his application; has made oath that he is a citizen of the United States; that he does verily believe he is the original and first inventor or discoverer of said invention, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty-five dol-
297 lars; and presented a petition to the Commissioner of Patents praying that a patent may be granted for that purpose:

These are, therefore, to grant, according to law, to the said T. H. and S. A. Whitney, their heirs, administrators, or assigns, for the term of seventeen years from the twelfth day of June, one thousand eight hundred and sixty-one, the full and exclusive right and liberty of making, using, and vending to others to be used, the said invention, a description whereof is given in the words of the said John Focer, in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent-Office has been hereunto affixed.

Given under my hand, at the city of Washington, this twelfth day of June, in the year of our Lord one thousand eight hundred and sixty-six, and of the Independence of the United States of America the ninetieth.

[SEAL.] W. T. OTTO,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent-Office.

T. C. THEAKER,
Commissioner of Patents.

The schedule referred to in these letters-patent and making part of the same.

To all whom it may concern:

Be it known that I, John Focer, of Glassboro', Gloucester County, New Jersey, have invented an improvement in air-tight jars, and I do hereby declare the following to be a full, clear, and exact description of the same, reference being had to the accompanying drawing and to the letters of reference marked thereon.

My invention consists of a ring of thin metal, having screw-
298 threads adapted to similar threads on the glass-cover and the neck

of a preserving-jar, all substantially as described hereafter, so as to afford a simple and economical mode of securing the cover to the jar and of compressing between the two a ring of gum-elastic.

In order to enable others skilled in the art to make and use my invention, I will now proceed to describe its construction and operation. On reference to the accompanying drawing, which forms a part of this specification—

Fig. 1 is a vertical section of part of an air-tight jar with my improvement.

Fig. 2 an exterior view of the neck of the jar, and

Fig. 3 a sectional plan on the line 1, 2, Fig. 1.

Similar letters refer to similar parts throughout the several views.

A is the neck of the jar, and B the cover, which has an annular flange, *b*, arranged to fit snugly over an annular flange, *a*, forming the mouth of the jar. This flange *a* terminates at a shoulder, *d*, between which and the end of the annular flange *b* of the cover intervenes a ring of gum-elastic or other equivalent material.

Screw-threads *e* are formed on the exterior of the cover, and similar threads, *f*, on the exterior of the neck of the jar.

D is a ring of thin metal, (ordinary tinned plates will serve the desired purpose,) and in this ring are formed screw-threads adapted to those on the cover and neck of the vessel. This screw-ring is first applied to the cover by turning it on the same until its upper edge reaches the projecting flange *b* of the cover, after which the remaining portion of the screw-ring is applied to the neck of the jar by turning the cover round until the gum-elastic ring is so far compressed as to form a perfectly tight joint.

A, the screw-threads, can be formed on the glass-cover and jar during the process of making the same, with but little trouble and expense, and as the tin ring can have its screw-threads readily formed by suitable rolling-machinery, it will be evident that my improved cover for preserving-jars possesses the advantage of simplicity and economy.

Should there be any slight inequalities in the screwed portions
299 of the cover and jar, they will not interfere with the proper adjustment of the cover, inasmuch as the metal-ring is so thin as to readily yield to slight irregularities.

I claim as my invention and desire to secure by letters-patent:

The thin metal-ring D, having screw-threads adapted to similar threads on the cover, B, and neck, A, of a preserving-jar, all substantially as and for the purpose herein set forth.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

JOHN FOCER.

Witnesses:

EDW'D T. LUTZ.

THEO. AMADOWN.

UNITED STATES PATENT-OFFICE.

Thomas H. Whitney and S. A. Whitney, of Glassborough, New Jersey, assignees of John Focer; letters-patent No. 55581, dated June 12, 1866; reissue No. 3781, dated December 28, 1869. Improvement in fruit-jars.

The schedule referred to in these letters-patent and making part of the same.

John Focer, of Glassborough, in the county of Gloucester, and State

of New Jersey, did invent certain improvements in air-tight jars, of which the following is a specification:

300 This invention relates to air-tight jars in which fruits or vegetables are to be preserved; and

The improvements consist—

First, in a ring of thin metal, having screw-threads adapted to similar threads on the cover and on the neck of the jar.

Second, in the combination of the jar, cover, screw-threaded ring, and a gasket or packing-ring.

To enable those skilled in the art to make and use this invention, we will proceed to describe its construction and operation.

In the annexed drawings—

Figure 1 is a central vertical section of the upper part of an air-tight jar, showing the improvements.

Figure 2 is an elevation thereof.

Figure 3 is a sectional plan on line 1 2 of Fig. 1.

The same letters are used in the designation of identical parts in all the figures.

A represents the neck of a jar, upon the exterior of which is formed a bead or screw-thread, *f*, which vanishes on top in a shoulder, *d*. This shoulder is formed by an abrupt contraction of the neck, for the purpose of receiving and supporting a gasket or packing-ring, C. The neck terminates in an annular flange, *a*, which forms the mouth of the jar.

B represents the cover, which has an annular flange, *b*, fitting over the annular flange *a* of the jar. Screw-threads, *e*, similar to those on the neck of the jar, are formed upon the exterior of the flange *b*, vanishing on top in a horizontally-projecting flange *h*.

C represents a gasket or packing-ring, which may be of India rubber or any other suitable material. It is to be slipped over the flange *a* of the jar, and supported upon the shoulder *d* thereof.

D is a ring, of thin metal. (Ordinary tinned plates will serve the desired purpose.) In this ring, screw-threads are formed, adapted to those on the cover and neck of the jar.

This screw-ring is first applied to the cover by turning it on the same until its upper edge reaches the projecting flange *h* hereof, after which the remaining portion of the screw-ring is applied to the neck of the jar, by turning the cover around until the packing-ring C is so

301 much compressed between the annular flange *b* of the cover and the shoulder *d* of the jar as to form a perfectly air-tight joint.

As the screw-threads can be formed on the glass cover and jar during the process of making the same with but little trouble and expense, and as the ring can have its screw-threads readily formed by suitable rolling-machinery, it will be evident that my improved manner of hermetically closing preserve-jars possesses the advantage of simplicity and economy.

Should there be any slight inequalities in the screw-threaded portions of the cover and jar, they will not interfere with the proper adjustment of the ring and cover, inasmuch as the former is so thin as to readily yield to slight inequalities.

What we claim as the invention of the said John Focer, and desire to secure by letters-patent, is—

1. The thin metal ring D, having screw-threads adapted to similar threads on the cover B and neck A of a preserving-jar, all substantially as and for the purpose herein set forth.

2. The combination with a preserve-jar, the neck of which is con-

structed substantially as herein set forth, of the cover B, gasket C, and ring D, as and for the purpose specified.

In testimony whereof we have signed our names to this specification, before two subscribing witnesses.

THO. H. WHITNEY.
S. A. WHITNEY.

Witnesses:
S. W. WARRICK.
THOS. ANNUDIM.

302 *Defendant's Exhibit No. 43.*

The U. S. Patent-Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of reissue patent No. 3781, granted December 28, 1869, to Thos. H. and S. A. Whitney.

In testimony whereof I, S. S. Fisher, Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this fifth day of January, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States the ninety-fourth.

[SEAL.] SAML. S. FISHER,
Commissioner.

Reissue No. 3781.

The United States of America to all to whom these letters-patent shall come:

Whereas Thomas H. Whitney and S. A. Whitney, of Glassborough, New Jersey, assignees of John Focer, have alleged that said John Focer invented a new and useful improvement in fruit-jars, (for which letters-patent were issued to said assignees, dated June 12, 1866, which letters having been surrendered, the same have been cancelled and new letters ordered to issue to them, on an amended specification,) and had made oath that he was a citizen of the United States; that he did verily believe he was the original and first inventor or discoverer of the
303 said improvement, and that the same hath not, to his knowledge and belief, been previously known or used; said assignees having paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, praying that a patent may be issued therefor:

These are therefore to grant to the said Thomas H. and S. A. Whitney, their executors, administrators, or assigns, for the term of seventeen years from the twelfth day of June, one thousand eight hundred and sixty-six, the full and exclusive right and liberty of making, using, and vending to others to be used, the said improvement, a description whereof is given in the annexed schedule and made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent-Office to be hereunto affixed.

Given under my hand, at the city of Washington, this 28th day of December, in the year of our Lord one thousand eight hundred and

sixty-nine, and of the Independence of the United States of America the ninety-fourth.

[L. S.]

WM. T. OTTO,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent-Office.

S. H. HODGES,
Acting Commissioner of Patents.

Defendant's Exhibit—44.

The U. S. Patent-Office to all persons whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the rec-
304 ords of this office of the letters-patent granted S. B. Rowley, dated December 14th, 1869, No. 97964, for "Improved fruit-jar."

In testimony whereof I, J. M. Thacher, Acting Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this sixteenth day of June, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-seventh.

[SEAL.]

J. M. THACHER,
Acting Commissioner.

No. 97964.

The United States of America to all to whom these letters-patent shall come:

Whereas S. B. Rowley, of Philadelphia, Pennsylvania, has alleged that he has invented a new and useful improved fruit-jar, and has made oath that he is a citizen of the United States; that he verily believes he is the original and first inventor or discoverer of the said invention, and that the same hath not, to his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissioner of Patents, praying that a patent may be issued therefor:

These are, therefore, to grant to the said S. B. Rowley, his executors administrators, or assigns, for the term of seventeen years from the fourteenth day of December, one thousand eight hundred and sixty-nine, the full and exclusive right and liberty of making, using, and vending to others to be used, the said invention, a description whereof is given in the annexed schedule, and made part of these presents.

In witness whereof I have caused these letters to be made
305 patent, and the seal of the Patent-Office to be hereunto affixed.

Given under my hand, at the city of Washington, this fourteenth day of December, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-fourth.

[S. L.]

W. T. OTTO,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent-Office.

SAMUEL S. FISHER,
Commissioner of Patents.

UNITED STATES PATENT-OFFICE.

S. B. Rowley, of Philadelphia, Pennsylvania. Letters-patent No. 97964, dated December 14, 1869. Improved fruit-jar.

The schedule referred to in these letters-patent and making part of the same.

(To all whom it may concern:)

Be it known that I, S. B. Rowley, of Philadelphia, Pennsylvania, have invented an improvement in preserving-vessels; and I do hereby declare the following to be a full, clear, and exact description of the same:

My invention consists in the combination of a screw-ring, a
306 thin metal cap, and a gum-elastic ring, with a jar, having a rib, over which the gum ring and cap fit, a shoulder between which and a flange on the cap, the gum ring is compressed, and screw-threads adapted to those on the screw-ring, by turning which direct pressure is applied to the gum ring, the whole of the parts being arranged and adapted to each other, as described hereafter, so as to hermetically close the mouth of the jar.

In order to enable others skilled in the art to make and use my invention, I will now proceed to describe its construction and operation, reference being had to the accompanying drawing, which forms a part of this specification, and in which are represented the upper portion of a jar, and the several parts composing the cover, detached from each other.

A represents the upper portion of a preserving-jar on the exterior of which is formed a screw-thread, *a*, the latter terminating at the shoulder *b*, above which projects the annular rib or flange *d*, surrounding the mouth *e* of the jar.

On the outside, at the upper edge of this rib, is a lip or projection, *f*, over which the gum-elastic ring *h* must be stretched before it can reach the shoulder *b*.

B is the cap, of thin metal, formed by dies to the shape shown in the drawing, the recess in the under side of the cap being such that the cap will fit freely over the annular rib *d*, so that the flange *h* of the cap may bear on the gum-elastic ring.

D is a ring, of thin metal, on the vertical portion *i* of which is formed a screw-thread, adapted to that on the neck of the jar, the internal horizontal flange *j* of the ring being arranged to bear on the top of the flange *h* of the cap, so that in screwing down the ring D, the annular gum-elastic ring will be compressed between the flange *h* of the cap and the shoulder *b* of the jar, thus producing a perfectly-tight joint.

I am aware that a screw-ring, or, as it may be termed, an annular nut, D, of metal has been adapted to a screw formed on a jar, and has been arranged to compress a gum-elastic ring, not to a shoulder *b*, how-
307 ever, formed below the mouth of the jar, as shown in the drawing, but against the upper edge of the mouth, as illustrated and described in the patent granted to Charles G. Imlay, May 23, 1865.

As the licensee and manufacturer of this invention, I have found that the objection to this plan of pressing the gum ring against the upper edge of the mouth is, that the latter must be subjected to the tedious operation of grinding, in order that it may be sufficiently true and even. The edge, too, is easily broken during the grinding, or afterward, and

the jar is thereby rendered useless, defects which are obviated by the shoulder *b*, forming below the mouth a smooth and true bed for the gum ring.

A similar shoulder has been heretofore used, but in combination with a glass stopper, to which a downward pressure was imparted by a screw passing through a yoke, and bearing on the centre of the stopper, as seen in the patent granted November 4, 1862, to T. G. Otterson, and in the patent of N. S. Gilbert, January 29, 1861, and December 17, 1861.

The difficulty in making the glass stopper true, and the consequent imperfection of the joint, have been the main objections to this device, which are overcome, however, by the use of the thin metal cap, to the flange of which, and consequently to the gum ring, direct pressure is applied by a screw-ring, in the manner described.

It will thus be seen that two important advantages are attained by my improvement, namely, the smooth and true bed for the ring, and the application of direct pressure to the true flange of the cap immediately above the gum ring and its shoulder.

I wish it to be distinctly understood, therefore, that I do not desire to claim separately any of the parts or features represented and described; neither do I claim broadly the combination, with a jar, of a screw-ring, cap, and packing, which is compressed between the cap and a shoulder on the jar by the action of the screw-ring, as this has been heretofore done; but

I claim as my invention and desire to secure by letters-patent—

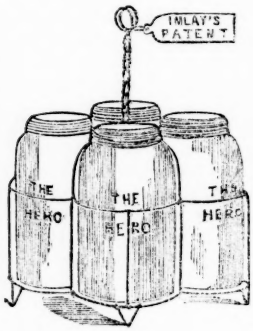
The combination of the screw-ring D and its flange *j*, the thin metal cap B, and its flange *h*, the rib *d*, shoulder *b*, and screw-thread *a*
308 of the jar, and the gum ring *h*, the whole being constructed, arranged, and adapted to each other, as and for the purpose herein set forth.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

S. B. ROWLEY.

Witnesses:
C. E. FOSTER.
W. J. R. DELANY.

Defendant's exhibit 47.



Defendant's exhibit 48.

he U. S. Patent-Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files
309 of this office of the file-wrapper and contents in matter of letters-patent granted to S. B. Rowley, dated December 14th, 1869, and numbered 97964, for "Preserve-jars."

In testimony whereof I, M. D. Leggett, Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed, this twenty-second day of October, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-eighth.

[SEAL.] M. D. LEGGETT,
Commissioner.

Letter from attorney enclosing petition, specification, and oath of S. B. Rowley—preserve-jars.

[Patent Nov. 26, 1867, Office.]

In the matter of the application of S. B. Rowley for letters-patent for improvement in preserve-jars.

HOWSON'S PATENT AGENCY,
Philadelphia, Nov. 23, 1867.

To the Hon. COMMISSIONER OF PATENTS:

SIR: I herewith enclose specification, two drawings, and relating to the above application, together with a certificate of fifteen dollars, as first Government fee.

The model accompanies the papers.

Very respectfully yours,

H. HOWSON,
Attorney for S. B. Rowley.

To the Commissioner of Patents.

The petition of S. B. Rowley, of Philadelphia, Pennsylvania, respectfully represents that your petitioner has invented an improve-
310 ment in preserve-jars, which he verily believes had not been known or used prior to the invention thereof by your petitioner. He therefore prays that letters-patent of the United States may be granted to him therefor vesting in him and his legal representatives the exclusive right to the same upon the terms and conditions expressed in the act of Congress in that case made and provided, he having paid fifteen dollars into the Treasury and complied with the other provisions of the said act.

And he hereby constitutes and appoints Henry Howson, of Philadelphia, Pennsylvania, or his duly authorized agent, his lawful attorney and agent to alter and modify the specification, to sign the drawings, to alter the same as he may deem expedient, and to receive and transmit the patent when granted.

Signed at Philadelphia this twenty-third day of November, 1867.

S. B. ROWLEY.

To all whom it may concern:

Be it known that I, S. B. Rowley, of Philadelphia, Pennsylvania, have invented an improvement in preserving-vessels, and I do hereby declare the following to be a full, clear, and exact description of the same.

My invention consists in the combination of a screw-ring, a thin metal cap, and a gum-elastic ring, with a jar, having a rib over which the gum ring and cap fit, a shoulder between which and a flange on the cap the gum ring is compressed and screw-threads adapted to those on the screw-ring, by turning which direct pressure is applied to the gum ring; the whole of the parts being arranged and adapted to each other as described hereafter, so as to hermetically close the mouth of the jar.

In order to enable others skilled in the art to make and use my invention, I will now proceed to describe its construction and operation, reference being had to the accompanying drawing, which forms a part of this specification, and in which are represented the upper portion of a jar and the several parts composing the cover, detached from each other.

A represents the upper portion of a preserving-jar, on the exterior of which is formed a screw-thread, *a*, the latter terminating at the
311 shoulder *b*, above which projects the annular rib or flange *d* surrounding the mouth of the jar. On the outside, at the upper edge of this rib, is a lip or projection, *f*, over which the gum-elastic ring *h* must be stretched before it can reach the shoulder *b*. B is the cap of thin metal formed by dies to the shape shown in the drawing, the recess in the underside of the cap being such that the cap will fit fully over the annular rib *d*, so that the flange *h* of the cap may bear on the gum-elastic ring.

D is a ring of thin metal, on the vertical portion *i* of which is formed a screw-thread adapted to that on the neck of the jar, the internal horizontal flange of the ring being arranged to bear on the top of the flange *h* of the cap, so that on screwing down the ring D the annular gum-elastic ring will be compressed between the flange *h* of the cap and the shoulder *b* of the jar, thus producing a perfectly light joint.

I am aware that a screw-ring or, as it may be termed, an annular nut, D, of metal has been adapted to a screw formed on a jar and has been arranged to compress a gum-elastic ring, not to shoulder *b*, however, formed below the mouth of the jar as shown in the drawing, but against the upper edge of the mouth as illustrated and described in the patent granted to Chas. G. Imlay, May 23, 1865. As the license' and manufacturer of this invention, I have found that the objection to this plan of pressing the gum ring against the upper edge of the mouth is that the latter must be subjected to the tedious operation of grinding in order that it may be sufficiently true and even; the edge too is easily broken during the grinding, or afterwards, and the jar is thereby rendered useless—defects which are obviated by the shoulder *b* forming below the mouth a smooth and true bed for the gum ring.

A similar shoulder has been heretofore used, but in combination with a glass stopper, to which a downward pressure was imparted by a screw passing through a yoke and bearing on the center of the stopper, as seen in the patent granted Nov. 4, 1862, to T. G. Otherson, and in the patent of N. S. Gilbert, Jan. 29, 1861, and Dec. 17, 1861. The difficulty of making the glass stopper true, and the consequent imperfection of the joint have been the main objections to this device, which are overcome, however, by the use of the thin metal cap, to the flange of
312 which, and consequently to the gum ring, direct pressure is applied by a screw-ring in the manner described.

It will thus be seen that two important advantages are obtained by my improvement, namely, the smooth and true bed for the ring, and the application of direct pressure to the true flange of the cap immediately above the gum ring and its shoulder.

I wish to be distinctly understood, therefore, that I do not desire to claim separately any of the parts or features represented and described, but I claim as my invention and desire to secure by letters-patent,

The combination of the screw-ring D and its flange *j*, the thin metal cap B and its flange *h*, the rib *d*, shoulder *b*, and screw-thread *a* of the jar, and the gum ring *h*, the whole being constructed, arranged, and adapted to each other as and for the purpose herein set forth.

In testimony whereof I have signed my name to this specification in presence of the subscribing witnesses.

S. B. ROWLEY.

Witnesses:
C. E. FOSTER.
W. J. R. DELANY.

CITY AND COUNTY OF PHILADELPHIA,
State of Pennsylvania, ss:

On this twenty-third day of November, 1867, before me, the subscriber, an alderman in and for the city aforesaid, personally appeared the within-named S. B. Rowley and made solemn oath that he verily believes himself to be the original and first inventor of the improvement in preserve-jars herein described, and that he does not know or believe that the same was ever before known or used, and that he is a citizen of the United States.

[L. S.] JOHN WHITE,
Alderman.

313 U. S. PATENT OFFICE,
Washington, D. C., Dec. 3, 1867.

S. B. ROWLEY,
Care H. Howson, Philadelphia, Pa.

SIR: Please find below the decision of the examiner in charge in the matter of your application for patent for preserve-jars.

Filed Nov. 26, 1867.

Very respectfully,

Commissioner.

EXAMINER'S ROOM, No. 2.

The application above referred to has been rejected on the patent of C. G. Imlay, May 23, 1865, which fully anticipates the invention.

B. S. HEDRICK,
Examiner.

And also all Gilbert's patent.

Office to Rowley, Dec. 3, 1867—1st rejection.

Letter from attorney for Rowley.

In the matter of the application of S. B. Rowley for letters-patent for preserve-jars.

HOWSON'S PATENT AGENCY,
Washington, D. C., January 17, 1868.

To the Hon. COMMISSIONER OF PATENTS:

SIR: The device claimed in this application consists of the combina-

tion of a jar known as the "Hero" jar, patented by T. G. Otterson, Nov. 4, 1862, and a metal screw-cap, patented by C. G. Imlay, May 23, 1865. The specification has been amended to acknowledge both inventions, and to disclaim them separately; the claim being limited to the precise combination. At the request of the examiner I would state that the applicant is the exclusive owner of the Otterson's patent, and is licensed by Imlay; as will fully appear by the annexed official abstract.

Very respectfully, yours,

H. HOWSON,
Atty. for S. B. Rowley.

314 *Amendments.—Filed Jan.* 17, 1868.

In the matter of the application of S. B. Rowley for letters-patent for a preserving vessel.

HOWSON'S PATENT AGENCY,
Washington, Jan. 10th, 1868.

To the Hon. COMMISSIONER OF PATENTS:

SIR: I herewith amend the specification of the above application—

First. By inserting between the word "described" and the word "but," 18th line, 4th page, the following:

"Neither do I claim broadly the combination with a jar of a screw-ring, cap, and packing, which is composed between the cap and a shoulder on the jar by the action of the screw-ring, as this has been heretofore done."

Second. By striking out the word "that," 18th line, 4th page.

Third. By inserting the word "constructed" between the word "being" and the word "arranged," 25th line, 4th page.

Very respectfully, yours,

H. HOWSON,
Atty. for S. B. Rowley.

Power of attorney from S. B. Rowley to Henry Howson.

In the matter of the interference declared between the application of John L. Mason and that of S. B. Rowley, for letters-patent for improvement in fruit-jars.

PHILADELPHIA, *Feb.* 27, 1868.

To the Hon. COMMISSIONER OF PATENTS:

SIR: You are hereby authorized and requested to acknowledge Henry Howson and Charles Howson, of the city of Philadelphia, as my attornies and counsel in the matter of the above-named case of interference.

Very respectfully, yours,

S. B. ROWLEY.

[50-cent stamp, cancelled, S. B. R. Feb. 27, '68.]

315 *Patent.—Nov.* 3, 1868.—*Office.—Request for Re-exam.*

In the matter of the interference between the application of S. B. Rowley and that of J. L. Mason for letters-patent for improvement in fruit-jars.

WASHINGTON, D. C., *November* 3, 1868.

To the Hon. COMMISSIONER OF PATENTS:

SIR: I would respectfully request that the action granting the above

interference may be reconsidered by the examiner in charge of the class in view of the following patents:

T. G. Otterson, Nov. 4, 1862.
C. G. Imlay, May 23, 1865.

Very respectfully, yours,

H. HOWSON,
Atty. for S. B. Rowley.

S. B. Rowley. Application filed Nov. 26, '67. Fruit-jar.

NOTE.—Class of "fruit-jars" transferred from Hedrick to Wilkinson, June 4, '68, to Munson, May 1, '69.

CORRECT RECORD OF ACTIONS.

Dec. 3, '67, rejected.
Jan. 10, '68, spec. thin dry. to atty.
Jan. 11, '68, rejected.
Jan. 20, '68, passed for issue. B. S. Hedrick.
Jan. 25, '68, decv. of interference with appln. of John S. Mason, filed Jan. 15, '68. Hearing, March 9, '68.
Apl. 11, '68, closing testimony ppd.
May 27, '68, postponement refused.
June 3, '68, postponement refused.
June 4, '68, trans. to Wilkinson.
June 5, '68, hearing ppd.
316 Aug. 19, '68, decision examiner fav. of Rowley. Limit appln., Sept. 19, '68.
Nov. 5, '68, passed for issue. A. G. Wilkinson.
Jan. 29, '69, decision examiners-in-chief fav. of Rowley. Limit appln., Feb. 29, '69.
Feb. 17, '69, decision commissioners fav. of Mason. Limit appln., March 18, '69.
May 1, '69, trans. to Munson.
May 4, '69, dicision supreme court fav. of Rowley.
May 4, '69, interference dissolvsd.
May 7, '69, action ppd. 10 days from date, to allow a pending applicant to request an interference. Sec. 13.
May 8, '69, action suspended by order of Commission's.
Dec. 4, '69, sent forward for issue without new signatures, by order of Commissioners.

No. 97964.

S. B. Rowley, of Philadelphia, county of Philadelphia, State of Pennsylvania. Preserve-jars.

Received Nov. 26, 1867.
Petition, " " "
Affidavit, " " "
Specification, " " "
2 drawings, " " "
Model, " " "
1 cert. dep. $15, Nov. 26, 1867.
Cash.
Add'l fee cert.

1 " " cash $20, Jan. 24, 1868.
Nov. 5, 1868, A. G. Wilkinson.
Examined Jan. 20, 1868, B. S. Hedrick.
2 Issue, Glinnell, Nov. 6, 1868.
3 Patented Dec. 14, 1869.
317 Recorded, vol. page.
Circular Jan. 22, 1868.
" Nov. 6, 1868.

H. HOWSON,
Philadelphia, Pa.

Rej. 1, Dec. 3, '67.
Spec. and thin dr. rec'd Jan. 10, 1868.

H. HOWSON.

Rej. 11, Jan. 11th, 1868.
Int. Jan. 25, '68, with app. of J. L. Mason.
Test. in chief to be closed previous to Feb. 11, Feb. 25, and March 3d, 1868.
Hearing 9th day of March, 1868.
Hearing postponed to 6th of July—June 5th, 1868.
Int. decided Aug. 19, 1868.
Jan. 29, '69, decision examiners in-chief in favor of —— Rowley.
Feb. 17, '69, decision of Commissioner in favor of Mason.
May 4, '69, decision of supreme court in favor of Rowley.
May 4, '69, interf. dissolved.
May 7, '69, issue postponed 10 days from date hereof, to allow a pending applicant to request an interference.
May 1869, action suspended by order of Comm'r.
Interference No. 1, declared May 21, '70, bet. appl'n of John L. Mason filed Feb. 14, '70. Pat. No. 87274 to J. L. Mason. Appl'n of T. G. Otterson, filed Jan. 5, '69. Appl. C. G. Imlay f Jan. 2, '69. Pats. to J. L. Mason, No. 86089, 102913, and to S. B. Rowley, 97964.
Hearing Sept. 1, '70.
See copy of actions in file.

318 The U. S. Patent-Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office, of the re-issue letters-patent granted Thomas G. Otterson, dated December 12, 1870, No. 4211, for "improvement in fruit-jars."

In testimony whereof I, J. M. Thacher, acting Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed this fourth day of November, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-eighth.

[SEAL.]

J. M. THACHER,
Acting Commissioner.

No. 4211.—Re-issue.

The United States of America to all whom these letters-patent shall come:

Whereas Thomas Garrison Otterson, of Philadelphia, Pennsylvania, assignor to S. B. Rowley, has alleged that he has invented a new and useful improvement in fruit jars (for which letters-patent were issued to

him, dated November 4, 1862; the same surrendered, and new letters issued to said assignee, dated June 9, 1868, which last letters having been surrendered, the same have been canceled, and new letters ordered to issue to him on an amended specification,) and has made oath that he is a citizen of the United States; that he verily believes he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to his knowledge and belief, been previously
319 known or used; said assignee having paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor.

These are, therefore, to grant to the said S. B. Rowley, his executors, administrators or assigns, for the term of seventeen years from the fourth day of November, one thousand eight hundred and sixty-two, the full and exclusive right and liberty of making, using, and vending to others to be used, the said improvement, a description whereof is given in the annexed schedule, and made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent-Office to be hereunto affixed.

Given under my hand, at the city of Washington, this twentieth day of December, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States of America the ninety-fifth.

[SEAL.]

W. T. OTTO,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent-Office.

SAML. A. DUNCAN,
Commissioner of Patents.

320 UNITED STATES PATENT-OFFICE.

Thomas Garrison Otterson, of Philadelphia, Pennsylvania, assignor to S. B. Rowley. Letters-patent No. 36853, dated November 4, 1862; re-issue No. 2977, dated June 9, 1878; re-issue No. 4211, dated December 20, 1870. Improvement in fruit jar.

The schedule referred to in these letters-patent and making part of the same.

I, Thomas Garrison Otterson, of the city of Philadelphia, Pennsylvania, formerly of Millville, New Jersey, am the inventer of a certain improved fruit-jar, for which letters-patent of the United States were granted to me on the 4th day of November, 1862, the said letters-patent having been subsequently surrendered, and re-issued letters-patent for the said invention granted to Salmon B. Rowley, of the said city of Philadelphia, as my assignee, by mesne assignments; and the following is a specification of my said invention:

My invention consists of a jar having in its exterior a groove or recess formed below the mouth and immediately above an exterior shoulder, and a cover adapted to slip over the portion of the neck of the jar between the mouth and the shoulder and bear directly upon the packing-ring, so that the latter may be compressed between the shoulder and the cover without turning the cover upon the packing-ring.

In the accompanying drawing—

Figure 1 is an exterior view of a jar made in accordance with my said invention;

Figure 2, a vertical section; and
321 Figure 3 represents the under side of the flanged cover of the jar.

A represents a glass jar, the body of which may be made in the form shown in the drawing or in any desired form.

In the jar illustrated in the drawing there is an enlargement or flange, B, in such a position on the exterior of the neck as to form below the mouth an exterior shoulder for receiving the packing-ring C of gum-elastic or other suitable material.

Immediately above this shoulder is formed a circular groove or recess, of such character and size that the inner portion of the packing-ring C may be received and fit snugly therein, the lower part of the said groove or recess forming a continuation of the shoulder, so that the packing-ring, after being expanded when placed over the mouth, will, when it rests upon the shoulder, contract and enter the said groove or recess. The latter thus serves to maintain the ring in its proper position and bearing on the shoulder.

The portion of the neck of the jar which projects above the shoulder is overlapped by the rim D of a cover, E, which is constructed of sufficiently larger diameter internally than the neck of the jar which it overlaps to allow of its being slipped directly downward over the neck and pressed directly upon the packing-ring, which is supported by the shoulder, with its inner edge in the recess.

The said rim D of the cover is, in the present instance, beveled, so that its lower edge may be narrow, and thus effectually indent the packing-ring.

In the jar shown in the drawing the cover is caused to bear on and compress the packing by an ordinary yoke, H, provided with a thumb-screw which bears upon the center of and exerts vertical pressure upon the top of the cover; but it is obvious that this vertical pressure may be obtained by a variety of devices.

It is evident the cover may be applied to and removed from the packing-ring without being twisted or turned thereupon, and that it bears upon the packing-ring with a direct pressure only, so that the ring is not rubbed, twisted, wrinkled, or displaced from its lodgement in
322 the groove or recess of the jar, as would be the case if the cover was constructed so that it could not be applied to the jar and packing-ring without screwing or otherwise forcibly turning it upon the said packing-ring; consequently, sufficient pressure may be exerted upon the cover to secure a tight joint without diminishing the efficacy of the groove or recess of the jar as a means of retaining the package in its proper position on the shoulder, and as there is no destructive frictional action upon the packing, it may be of that light, elastic, and yielding kind best adapted to be compressed by the cover.

I wish it to be understood that I do not desire to claim broadly, as my invention, a cover having an overlapping rim and resting upon a packing on an exterior shoulder formed below the mouth of the jar; nor do I desire to confine the claim to any specific mode of securing the cover to the jar; but

I claim as my invention—

A fruit-jar having the following features: a groove or recess in the exterior of the neck below the mouth, the bottom of said groove or recess forming a continuation of an exterior shoulder on the jar, and a cover overlapping that portion of the jar above the said shoulder, and adapted to bear upon and compress a packing-ring resting upon the said shoulder, and being applicable to and removable from the packing-ring without turning thereon.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

THOMAS GARRISON OTTERSON.

Witnesses:
J. M. COLGAN.
F. B. RICHARDS.

The U. S. Patent-Office. To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the
323 records of this office of the re-issue letters-patent granted S. B. Rowley, dated June 9th, 1868, No. 2977, for "Improved Fruit-Jar."

In testimony whereof I, M. D. Leggett, Commissioner of Patents, have caused the seal of the Patent-Office to be hereunto affixed, this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-eighth.

M. D. LEGGETT,
Commissioner.

No. 2977.—Re-issue.

The United States of America. To all to whom these letters-patent shall come:

Whereas, S. B. Rowley, of Philadelphia, Pennsylvania, assignee by mesne assignments of Thomas G. Otterson, of Millville, New Jersey, has alleged that said Thomas G. Otterson invented a new and useful improved fruit-jar (for which letters-patent were issued to him dated November 4, 1862, which letters having been surrendered by said assignee, the same have been cancelled, and new letters ordered to issue to him on an amended specification,) and had made oath that he was a citizen of the United States; that he did verily believe he was the original and first inventor or discoverer of the said invention, and that the same hath not, to his knowledge and belief, been previously known or used; said assignee having paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, praying that a patent may be issued therefor.

These are, therefore, to grant to the said S. B. Rowley, his executors, administrators, or assigns, for the term of seventeen years from the fourth day of November, one thousand eight hundred and sixty-
324 two, the full and exclusive right and liberty of making, using, and vending to others to be used, the said invention, a description whereof is given in the annexed schedule, and made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent-Office to be hereunto affixed.

Given under my hand, at the city of Washington, this ninth day of June, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States of America the ninety-second.

[L. S.]

W. T. OTTO,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent-Office.

A. M. STOUT,
Acting Commissioner of Patents.

325 UNITED STATES PATENT OFFICE.

S. B. Rowley, of Philadelphia, Pennsylvania, assignee, by mesne assignments, of Thomas G. Otterson, of Millville, New Jersey. Letters-patent No. 36853, dated November 4, 1862; re-issue No. 2977, dated June 9, 1868. Improved fruit-jar.

The schedule referred to in these letters-patent and making part of the same.

To all whom it may concern:

Be it known that I, S. B. Rowley, of Philadelphia, Pennsylvania, have become the owner, by the mesne assignment, of certain letters-patent for improvement in air-tight jars, granted to Thomas G. Otterson, November 4, 1862; and I do hereby declare the following to be a full, clear, and exact description of the said invention, which consists of a recess formed below the mouth and above a shoulder on the exterior of a jar, so as to retain the gum packing-ring in its position.

I will now proceed to describe the manner in which the said improvements may be carried into effect, reference being had to the accompanying drawing, which forms a part of this specification, and in which—

Figure 1 is an exterior view of the jar, with the improvements;

Figure 2 a vertical section; and

Figure 3 represents the under side of the cover.

A represents a glass jar, the body of which may be made in the form shown in the drawing, or in any other desired form.

Round the neck of the jar is made a flange or rib, B, in such a position as to form, below the mouth, a shoulder for receiving the
326 packing-ring C, of gum-elastic or other suitable material, which ring surrounds and is maintained in its position by the portion of the jar which projects above this shoulder.

This portion of the jar, which projects above the shoulder for receiving the ring, is overlapped by the flange of a cover, E, the said flange being caused to bear on the packing by an ordinary yoke, H, or other fastening.

In the present instance, the flange D of the cover is bevelled, so that its lower edge may be narrow, and penetrate the packing.

A groove is made in the jar, just above the shoulder, for the reception of the inner edge of the packing-ring, which, after being expanded when placed over the mouth, will contract and enter the groove, the latter thus serving to maintain the ring in its proper vertical position.

I wish it to be understood that I do not desire to claim broadly, as the invention of Thomas G. Otterson, a cover having a flange overlapping the mouth of a vessel, and resting on a packing on a shoulder formed beneath the said mouth; but

I claim, as an improvement on fruit-jars of this class, and as the invention of the said Thomas G. Otterson—

The within-described recess, formed on the exterior of the jar, beneath the mouth of the same, the bottom of the recess forming a continuation of the shoulder on the neck of the jar, all substantially as and for the purpose herein set forth.

In testimony whereof I have signed my name to this specification before two subscribing witnesses.

S. B. ROWLEY.

Witnesses:
W. J. BRUCE,
F. C. WHITE.

327 U. S. circuit court, southern district of New York.

CONSOLIDATED FRUIT-JAR CO.
vs.
JAMES T. WRIGHT. } In equity.

Please take notice that witnesses will be examined and testimony taken on behalf of the defendant in the above-entitled suit, before W. Grier Hibler, esq., special examiner, at his office, No. 435 Library street, in the city of Philadelphia, Penna., the examination to commence at 10 o'clock, a. m., on the 27th day of September, 1873, and to continue pursuant to adjournments.

Dated New York, Sept. 22, 1873.

Yours, &c.,

GEO. GIFFORD,
Solicitor for Defendant, 34 Beach St., N. Y.

To A. J. Todd, Esq.,
Complainant's Solicitor.

Service of notice, of which the within is a copy, is hereby admitted, N. Y., Sept. 22, 1873.

A. J. TODD,
Complainant's Solicitor.

United States circuit court, southern district of New York.

CONSOLIDATED FRUIT-JAR CO.
vs.
JAMES T. WRIGHT.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Charles Howson, of Philadelphia, Pa., being duly sworn, deposes and says, that he is of matüre age, that he is an attorney and coun-
328 sellor at law, and knows W. Grier Hibler, esq., of said Philadelphia, and that he is well qualified in all respects for an examiner to take testimony in the above-entitled suit.

CHARLES HOWSON.

Subscribed and sworn to before me this 18th Sept., 1873.

W. C. WITTER,
Notary Public N.Y. Co.

United States circuit court, southern district of New York.

CONSOLIDATED FRUIT-JAR CO.
vs.
JAMES T. WRIGHT.

On motion of Geo. Gifford, esq., counsel for defendant in the above-entitled suit, it is hereby ordered that W. Grier Hibler, esq., of the city of Philadelphia, Pa., be, and he hereby is, appointed special examiner to take testimony therein.

N. Y., Sept. 18, 1873.

(Signed) SAML. BLATCHFORD.

A copy.

[SEAL.] FEWSMITH G. WHITE, *Clerk.*

United States circuit court, southern district of New York.

THE CONSOLIDATED FRUIT-JAR CO. *vs.* JAMES T. WRIGHT. } In equity.

Consented that the defendant have October 14th, 15th, and 16th, within which to introduce their proofs in defense, instead of the 3d, 4th, and 6th days of October, 1873.

A. J. TODD,
Counsel for Complainant.
C. HOWSON,
For Respondent.

329 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Thursday, the fifth day of March, in the year of our Lord one thousand eight hundred and seventy-four.

Present, the honorable Lewis B. Woodruff, circuit judge.

THE CONSOLIDATED FRUIT-JAR COMPANY *vs.* JAMES T. WRIGHT. } In equity.

The above cause coming on for final hearing upon pleading and proofs, Mr. Andrew J. Todd is heard in behalf of the complainant.

330 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Friday, the sixth day of March, in the year of our Lord one thousand eight hundred and seventy-four.

Present, the honorable Lewis B. Woodruff, circuit judge.

THE CONSOLIDATED FRUIT-JAR COMPANY *vs.* JAMES T. WRIGHT. } In equity.

The above cause being still on hearing,
Mr. George Gifford is heard on behalf of the defendant.
Mr. John B. Latrobe is heard in reply.
Curia advisari vult.

331 U. S. circuit court, southern district of New York.

THE CONSOLIDATED FRUIT-JAR COMPANY *vs.* JAMES T. WRIGHT. }

WOODRUFF, *Circuit J.:*

The bill is filed herein to restrain the alleged infringement of a patent granted May 10, 1870, to John L. Mason for an "improvement in fruit-jars," and, by assignment, now held by the complainant. The application of Mason for the patent was made on the 15th of January, 1868.

In the specification the invention is said to relate "to a new and improved construction of jars and other vessels designed for the preservation of fruit and other substances which are seriously affected by exposure to air, whereby India-rubber packing rings or gaskets can be employed in making tight joints without exposing the rubber to the contents of the jars, and whereby flat horizontal shoulders, formed outside of the jars, are adapted to form bases, upon which to receive said rubber packing-rings, upon the exterior of the jars above the continuous glass screw; and whereby flanged caps or covers can be used, the flanges of which are adapted to fit over annular ribs or flanges surrounding the mouth of the jars; and whereby flexible flanged screw-rings, made of thin metal, are adapted to confine the caps or covers down firmly in place over the months of the jars and upon the said rubber packing-rings, placed upon the said shoulders formed outside of the jars."

After a more minute description and reference to the drawings annexed to his specification the patentee states that he claims:

"The combination, first, of the shoulder *b*, to receive a gasket outside and a little below the top of the jar; second, of the cover B with the rim *d*, extending down outside of the top to press upon the gasket; and third, of the screw-ring or screw-cap C, with its screw-threads operating upon those of the jar below the gasket-shoulder, all substantially as above set forth and described."

It is to be noticed that the patentee does not claim either of the elements or parts of this combination; nor does the patent purport to secure to him the exclusive right to use either, nor does it secure to him the special form of either, but only the combination of the three.

The patent, therefore, in no wise hindered the use by any one of a cover having a rim or flange extending down outside of the top of the jar to press upon a gasket, nor of a shoulder upon the outside of the jar, a little below the top, to receive such gasket, nor of both of these combined, provided the purpose was not produced by a screw-ring whose threads operated upon threads in the glass-jar below the gasket, and so of any other jar not combining the three parts. The patent is strictly a combination patent, in which the parts are not claimed to be new.

Possibly this criticism may have some bearing upon the efforts of certain patents, granted after the patentee is alleged to have made his invention and before he applied for a patent, which patents are for inventions which in his specification Mason expressly disclaims.

If the effect of his disclaimer in the very patent on which the suit is brought left nothing of patentable invention to be secured by the patent, then it may be wholly in vain as to any right to be established under the patent that the complainants prove that Mason invented the fruit-jar described, or all, any, or either of the parts thereof, before such patents were granted. For the purposes of this suit the disclaimers of the patentee must be taken to concede, as to the inventions disclaimed, the right to use the devices therein shown, and all the legal consequences of the recognition of that right.

It is not my intention to discuss at much length the proofs herein or the legal questions which may be involved. I must content myself with stating briefly my conclusions.

1. The proofs show that Mason, the patentee, did first invent a fruit-jar containing the combination described in the patent, and that he made such invention in the summer of the year 1859; that he then completed such invention, reduced it to practical form, adapted to use and sale as fully as has at any time since been done.

332 2. The proofs show that at the time last mentioned he caused at least two dozen of such completed jars to be manufactured; that some of them were put into actual domestic use for the keeping of preserved fruits, and others thereof were put by the patentee on public sale and were sold, and the proceeds of sale were received by him; that such sale was made by the patentee for the double purpose of "getting the money" therefor, and of "trying them to see if they would sell well."

3. That at the time last aforesaid the said patentee contempla ed procuring a patent for his said invention, and there is no affirmative evidence that he ever relinquished that purpose, except that for a period of more than nine years thereafter he did nothing toward the execution of such a purpose. He suffered the molds which he procured for the original making of such jars to remain unused at the glass-factory (where his jars had been blown and formed) without claiming them; and the proprietors, (in 1867,) after eight years, not knowing where to find the patentee, sold them, because not able to pay storage upon them; and nothing more was done in the matter of manufacturing such jars by the patentee down to the time of his said application for a patent on the 15th of January, 1868.

4. In the mean time Gillender and Bennett invented, and in 1865 patented, a fruit-jar having a shoulder on the outside, a little below the top of the jar, a cover, flanged, overlapping the top of the jar, extending downward outside of the top, and a screw-ring with screw-threads operating upon those of the jar below the shoulder, thus combining the devices before described in the very terms of the claim of the patent of Mason, with the single difference that the gasket was to be placed on the top of the jar, to receive the pressure of the cover, instead of upon the exterior shoulder, beneath the overlapping flange of such cover.

And Charles Imlay also invented, and in 1865 patented, a jar wherein the shoulder or seat of the gasket was inside the mouth of the jar, a little below the top, with a cover dropping within the mouth, with an annular notch or groove to contain or embrace the gasket resting on the shoulder, and having the like screw-rings to press the cover down upon the gasket, to make the jar air-tight.

These the patentee recognizes in his specification and disclaims as not within his claim.

Not only so; Gilbert, in 1861, and Otterson, in 1862, had invented, and they had, respectively, patented, jars having the shoulder to receive the gasket outside and a little below the top of the jar, and a cover with a flange or rim overlapping the top of the jar and extending down outside of the top to press upon the gasket. Their mode of giving preference to the top to hold it firmly down upon the gasket was a species of clamp, and not the screw-rings used by Gillender and Bennett and by Imlay. These also the patentee recognizes in his specification and disclaims as not within his invention.

What, then, was there remaining to be the subject of a patent? Certainly not the placing of a rubber-gasket on the shoulder outside of the jar; not the flanged cover to embrace the top of the jar and extending down upon the gasket; not both of these combined. These were devices which either separately or combined he disclaimed. But there was another device, equally adapted to be used with these, and without any additional device or change in its construction—the screw-rings of Imlay and of Gillender and Bennett. Add the screw-rings and screw-thread of the last-named two patentees, and all that Mason's patent claims is

effected. Is not this simply and only putting of the screw device to a new use without alteration and without any new result—a mere exercise of judgment in the choice between two or more known devices for pressing the cover down upon the packings or gasket? There is grave doubt whether, under circumstances such as I have stated, the patent describes and claims anything which under the disclaimers in the specification was of patentable invention. And if not, then in this suit, and under this patent, it would avail nothing if the complainants had proved that Mason was in fact the first inventor of the several devices named in it, and had neither done nor omitted anything affecting his right to have had a patent therefor, instead of the patent which he received.

333 5. But this is not all. Besides the jars of Gillender and Bennett and of Imlay, made and patented before the application of Mason for this patent, there were, in the year 1865, in the possession of Imlay, in actual domestic use, several jars of the construction described in Mason's patent and of the construction now claimed to infringe that patent. Imlay was in the business of devising and constructing fruit-jars, and in that year had taken out one patent for a fruit-jar, above referred to. It is not distinctly and in terms proved that he made those jars like the patented invention which was in use in his family. Nor is it proved how otherwise they were made. Whoever made them, the fact is another circumstance, added to the manufacture and sale by the said Mason in 1859, bearing on the allegation that the patented invention was on public sale and in use more than two years before the application for the patent now sued upon.

6. And still further it is shown that in the spring of 1866, negotiations were entered into between Imlay and S. B. Rowley for the manufacture of just such jars, (Rowley being the assignee of one or more of the said previous patents,) combining the devices as now claimed in the Mason patent; that on the 7th of March, 1866, Imlay licensed Rowley to use the devices mentioned in his patent and the Otterson patent, then held by Imlay, and by agreement of the same date the terms upon which the business was to be carried on were fixed between them, and that thence onward, in concert with Imlay, who produced to him such a jar as a sample, Rowley procured molds to be made, manufactured extensively and put upon public sale, among other jars, the jars containing the combination in question, (being the jars now alleged to infringe the patent thereafter granted to Mason.) Such jars being the Otterson jar with the screw-ring theretofore used by Imlay, transferred thereto as above already stated, the same being called and known as the Hero jar. These jars were extensively advertised, and it is proved that in the year 1866 Rowley sold of such jars about "one hundred and fifty to two hundred gross" having covers of glass and a large number having covers of metal applied in the same manner. And it is testified by his agent or clerk, without contradiction, that prior to 1868 he had sold several thousand gross of such jars.

The jars sold by the present defendant, and claimed to infringe the patent applied for by Mason in 1868, were purchased by him from Rowley, and this suit is defended by Rowley in vindication of his right to make and sell such jars.

7. Upon these facts my conclusion is that the alleged invention, if otherwise patentable, had been in "public use" and "on sale with the knowledge of the inventor," so as to deprive him of the right to a patent therefor.

8. The acts and neglect of Mason, the patentee, amounted to an abandonment of the supposed invention and of all claim to a patent therefor.

It was not until after the several patents above specified had been obtained by others, and after Rowley, in concert with Imlay, had engaged largely in the manufacture, and they had been for very nearly two years extensively sold, that Mason, nine years after his alleged invention, comes forward to claim the exclusive right to make such jars. If he originally might have claimed it, he had slept too long. He had abandoned the manufacture; his instruments of manufacture were lost or had passed from his possession and control without an effort to reclaim them. Others, having no connection with him, had produced and given to the public the benefit of the device he now seeks to claim; had devoted their time and capital to its production and its sale.

There was no reason for this delay if Mason entertained any purpose to pursue the invention or patent it; he had abundant means for the purpose. He actually applied for and received another patent. He apparently applied himself to a totally different subject, so as to indicate that, for some reason, he did not regard the device worthy of further attention, until either the ingenuity or skill, judgment, and capital of others applied to the manufacture and sale suggested to him that the alleged invention had value.

334 The opinion of Judge Fisher, in the supreme court of the District of Columbia, in the matter of the interference between the applications of Rowley and Mason, (put in evidence by the complainant,) is forcible and apt to this view of Mason's rights, especially as against Rowley, who it seems defends this suit. The authorities which he cites are to the like purport, (Adams vs. Jones, 1 Fisher, 527; White vs. Allen, 2 ib., 440; Sayles vs. R. R. Co., 2 ib., 523; Ramson vs. Mayor, 1 ib., 252; Woodcock vs. Parker, 1 Story, 590,) as well on the ground of abandonment as on the ground of unnecessary delay and neglect until Rowley or Rowley and Imlay had produced and put the alleged invention into extensive use and on sale for nearly two years, expending their time, industry, skill, and capital.

Nor, in my opinion, is it material to inquire whether Mason or Rowley did or could have obtained a patent for the combination in question. If an inventor, without substantial reason or excuse, abandons the use of his invention and for nine years sleeps on his rights, and in the mean time others in good faith employ their industry, skill, and money in producing the same thing and give the public the benefit thereof, putting it into extensive use and on sale, such a state of facts not only warrants the inference of abandonment by the first inventor, but it also creates as between him and the others the same equity as would arise if such others had gone further and taken out a patent. Whether the device is patented or has "gone into use without a patent" should make no difference. (Kendell vs. Winsor, 21 How., 322.)

This is not because lapse of time, per se, deprives an inventor of his rights, but because the circumstances giving character to the delay indicate abandonment, and also because the intervening rights of others make it inequitable that he should thereafter be permitted to assert any such exclusive title to the invention.

The bill must be dismissed with costs.

A. J. Todd and J. H. B. Latrobe, for complainants.
W. C. Witter and Geo. Gifford, for defendants.

335 At a stated term of the circuit court of the United States in and for the southern district of New York, held at the U. S. court-

rooms in the city of New York, on the twenty-seventh day of July, in the year one thousand eight hundred and seventy-four.

Present, the honorable Lewis B. Woodruff, circuit judge.

THE CONSOLIDATED FRUIT-JAR COMPANY
vs.
JAMES T. WRIGHT.

This cause having been brought to a hearing upon the pleadings and proofs filed therein, and having been argued by counsel for the respective parties:

Now, therefore, on consideration thereof, it is ordered, adjudged,
336 and decreed that the complainant's bill of complaint be, and the same is hereby, dismissed, with costs to the defendant herein, taxed at $278.00, and he have execution therefor.

L. B. WOODRUFF,
Circuit Judge.

(Endorsed:) United States circuit court, so. dist. of New York. In equity. Consolidated Fruit-Jar Company vs. James T. Wright. Decree. $278 is agreed upon as the amount of taxed costs; to be included in the decree in the above-entitled suit. A. J. Todd, compl'ts' sol'r; Geo. Gifford, deft.'s sol'r. Filed Aug. 3, 1874.

337 Supreme Court of the United States.

THE CONSOLIDATED FRUIT-JAR COMPANY
versus
JAMES T. WRIGHT. } In equity.

To the honorable the Supreme Court of the United States:

The appeal of the Consolidated Fruit-Jar Company, the above-named complainant and appellant, respectfully showeth:

That upon the tenth day of June, 1872, the above-named complainant and appellant filed its bill in the circuit court of the United States for the southern district of New York against the above-named defendant for the infringement of certain letters-patent of the United States, granted to John L. Mason on the tenth day of May, 1870, for improvement in fruit-jars, and subsequently assigned to the complainant,
338 by reason of the selling by said defendant of fruit-jars containing the improvement set forth and claimed in said letters-patent; that said defendant filed his answer to said bill of complaint alleging want of novelty, by reason of said invention having been known to and used by divers persons, and of its having been described and contained in certain letters-patent prior to said Mason's alleged invention thereof. Also alleging that said Mason had abandoned and forfeited the said invention, and lost all right by his delay in applying for letters-patent, and by laches, and by the same having, before his application for letters-patent therefor, been invented and patented by others, and having been invented and put into public use by others with the knowledge, consent, and allowance of said Mason; that a replication was filed thereto,
339 and after proofs taken the cause was brought to a hearing and argued by counsel for the respective parties.

That on the third day of August, 1874, a final decree was made and pronounced in the cause, where init was in substance adjudged and de-

creed that the said bill of complaint be dismissed, with costs taxed at $278.00.

Wherefore this appellant appeals from the whole of said decree of said circuit court of the United States, and respectfully prays that the decree of said circuit court and the bill, answer, pleadings, depositions, exhibits, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court and every part thereof may be reversed,
and a decree made granting said complainant the relief prayed in
340 its said bill of complaint, with costs, or such other decree as to the said Supreme Court shall seem meet.

Dated August 27th, 1874.

A. J. TOOD,
Solicitor and of Counsel for Complainant.

On reading and filing the above petition of appeal within and bond for costs, ordered that the said appeal be allowed.

L. B. WOODRUFF,
Circuit Judge.

(Endorsed:) Filed Sept. 8, '74.

341 Circuit court of the United States of America for the southern district of New York, in the second circuit.

THE CONSOLIDATED FRUIT-JAR COMPANY
vs.
JAMES T. WRIGHT. } Bond for costs.

Know all men by these presents that we, the Consolidated Fruit-Jar Company, as principal, and Stephen R. Pinckney, of the city of New York, State of New York, and Charles W. Reed, of the city of Clyde, in said State of New York, as sureties, are held and firmly bound unto the above-named James T. Wright, in the sum of one thousand dollars, to be paid to the said James T. Wright; for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents, sealed with our seals and dated the eleventh day of August, in the year of our Lord one thousand eight hundred and seventy.

Whereas the above-named the Consolidated Fruit-Jar Co. hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named the Consolidated Fruit-Jar Co. shall prosecute its said appeal to effect and answer all damages and costs if it shall fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CONSOLIDATED FRUIT-JAR CO.
By S. R. PINCKNEY, *Pres't.*
STEPHEN R. PINCKNEY. [L. S.]
C. W. REED. [L. S.]

Sealed and delivered and taken and acknowledged this 27th day of August, 1874, before me.

[L. S.]

ORIENT H. COLLIN,
Notary Public, County of New York.

342 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Stephen R. Pinckney being duly sworn, deposes and says that he is a freeholder; that he resides in the city of New York, and that he is worth the sum of two thousand dollars over and above all his just debts and liabilities.

STEPHEN R. PINCKNEY.

Sworn to this 27th day of August, A. D. 187 , before me.
[L. S.] ORIENT H. COLLIN,
Notary Public, County of New York.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Charles W. Reed, being duly sworn, deposes and says that he is a freeholder, and resides in the city of Clyde, in the State of New York; that he is engaged in business in the city of New York, and that he is worth the sum of two thousand dollars over and above his just debts & liabilities.

CHARLES W. REED.

Sworn to this 27th day of August, A. D. 1874, before me.
[L. S.] ORIENT H. COLLIN,
Notary Public, County of New York.

(Indorsed:) Vol. , page . U. S. circuit court. The Consolidated Fruit-Jar Co. vs. James T. Wright. Bond for costs on appeal to the Supreme Court of the United States. Filed this day of , 187 . Approved as to for' & sufficiency of sureties, Aug. 27th, 1874. L. B. Woodruff, circuit judge. Filed Sept. 18, '74.

343 U. S. circuit court, south. dist. of New York.

THE CONSOLIDATED FRUIT-JAR COMPANY
vs.
JAMES T. WRIGHT. } In equity.

On motion of A. J. Todd, complainant's solicitor, it is ordered that the exhibits on file in the clerk's office in the above-entitled cause, consisting of patents & cans, be transmitted to the Supreme Court of the United States, with the copy of the record on appeal, to be returned upon the decision on such appeal.

(Signed) L. B. WOODRUFF,
Circuit Judge.

(Endorsed:) Filed Sept. 29, 1874.

344 By the honorable Lewis B. Woodruff, one of the judges of the circuit court of the United States for the southern district of New York.

To James T. Wright:

Whereas the Consolidated Fruit-Jar Company has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, made in favor of you the said James T. Wright, and has filed the

security required by law: You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October next, to do and receive what may appertain in justice to be done in the premises.

Given under my hand at the city of New York, in the southern
345 district of New York, in the second circuit, this 29th day of August, in the year of our Lord one thousand eight hundred and seventy-four.

L. B. WOODRUFF,
Circuit Judge.

(Endorsed:) United States circuit court. Consolidated Fruit-Jar Co. vs. James T. Wright. Citation. Filed Sept. 22, 1874.

Service of a copy of the within citation admitted this 19th day of Sept., 1874.

GEO. GIFFORD,
Deft.'s Solr.

346 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 345, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of the Consolidated Fruit-Jar Company against James T. Wright, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 29th day of September, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the said United States the ninety-ninth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

(Indorsement on cover:) No. 166. The Consolidated Fruit-Jar Company, appellant, vs. James T. Wright. S. New York C. C. U. S. Filed 16th October, 1874.

Supreme Court of the U. S.

THE CONSOLIDATED FRUIT JAR CO.,

Appellant.

JAMES T. WRIGHT,

Respondent.

No. 166.

BRIEF FOR APPELLANT.

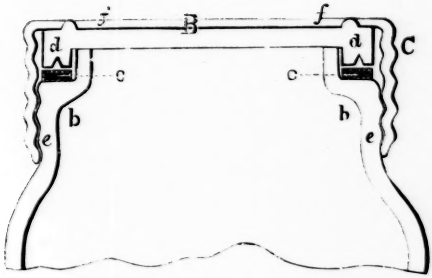
JOHN H. B. LATROBE,

Of Counsel.

NEW YORK:

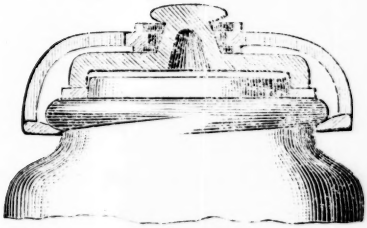
PINCKNEY BRO'S, LAW PRINTERS, 27 Barclay Street.

1876.

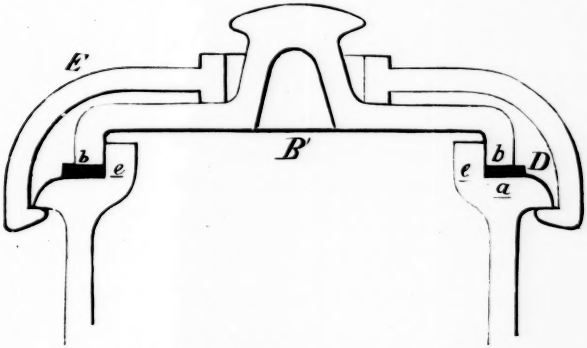


John L. Mason; invented and perfected in 1859; patent applied for January 15, 1868; issued May 10, 1870.

S. B. Rowley, Dec. 14, 1869; in interference with Mason, as above.

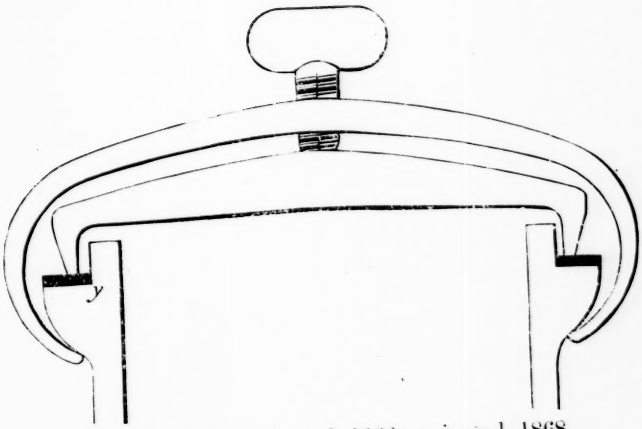


N. S. Gilbert; patented, 1861; re-issued, 1868.

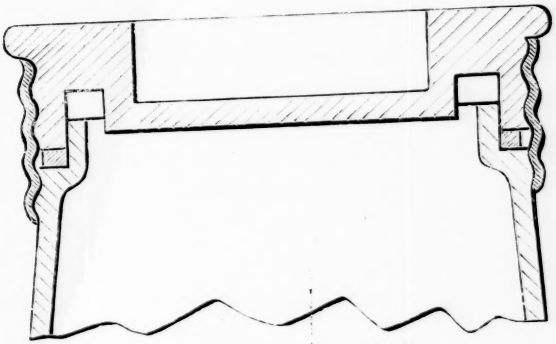


N. S. Gilbert; patented, 1861; re-issued, 1868.

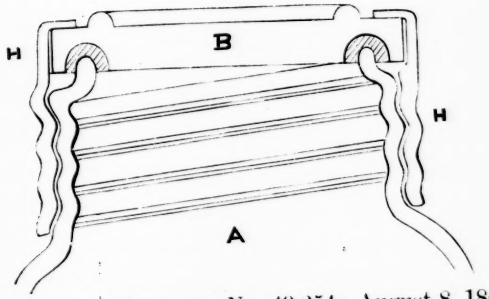
T. G. Otterson; patented, 1862; re-issued, 1868.



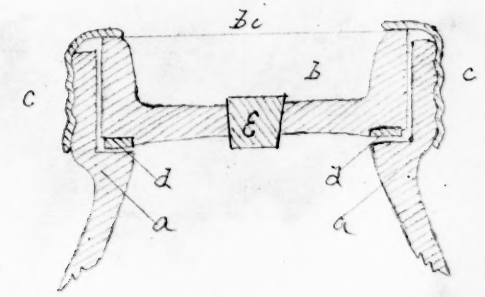
T. G. Otterson; patented, 1862; re-issued, 1868.



John Foces; June, 1866.



Gillender and Bennett; No. 49,254; August 8, 1865.



C. G. Imlay; No. 47,834; May 23, 1865.

Supreme Court of the U. S.

NO. 166.

THE CONSOLIDATED FRUIT JAR COMPANY,
Appellant,
vs.
JAMES T. WRIGHT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

The Bill in this case was filed to prevent the infringement of certain Letters Patent of the United States, granted to John L. Mason, May 10th, 1870, No. 102,913, for a new and useful improvement in fruit jars, which, by mesne assignment, had become the property of the complainants, and which were alleged to have been infringed by the defendants.

The object of the invention "was the preservation of fruit and other substances, which are seriously affected by exposure to the air, whereby India rubber packing-rings or gaskets can be employed in making air-tight joints, without exposing the rubber to the contents of the glass." (Record, page 9.)

After a full specification, in which the patentee describes the objections to which, in his judgment, the inventions of N. S. Gilbert, Thomas G. Otterson, Charles

4 G. Imlay, and Gillender and Bennett are obnoxious, he claims as his invention. "The combination, first, of the shoulder *b* to receive a gasket outside and a little below the jar; second, of the cover B with the rim *d* extending down outside of the top to press upon the gasket *c*; and, third, of the screw-ring or screw-cap C with its screw-threads operating upon those of the jar below the gasket shoulder." (Record 12.)

5 The patent, although dated May 10th, 1870, was applied for 15th January, 1868, and the testimony carries back the date of the invention to the summer of 1859; [Thomas I. Moulds, Record, p. 17; H. Reed, p. 22; C. G. Frampton, p. 27; Homer Brookes, p. 29; Eliza Ann Mason, p. 33; Charles W. Gray, p. 38; Joseph Bagot, p. 38; R. Franklin, p. 25; John L. Mason, p. 61; *et seq.*]

After describing the invention, Judge Woodruff, in the decision which is the subject of the present appeal, says:

6 1. "The proofs show that Mason, the patentee, did first invent a fruit jar containing the combination described in the patent, and that he made such invention in the summer of 1859; that he then completed such invention, reduced it to practical form, adapted to use and sale, as fully as has at any time since been done. (Record, 183.)

The identity of the jars made by the defendant with those described in Mason's specification is not in dispute here.

7 The delay between the application for the patent, January 15th, 1868, and the issue of it, May 10th, 1870, is accounted for in this way:

The Examiners-in-Chief refused the original application, and were reversed by the Commissoner, (Record, p. 89.) An interference with S. B. Rowley followed, which

was decided in Mason's favor, when an appeal carried it to 8
the Supreme Court D. C., where the Commissioners' decision was reversed by Judge Fisher, and a patent ordered to be granted to S. B. Rowley, *for the invention described in his specification*. It now appeared that the inventions of Rowley and Mason, which had been put in interference, were, in truth, distinct, a fact which had been overlooked by Judge Fisher; whereupon, the Commissioner on the matter being brought before him, once more, directed the present patent to be issued to Mason. (Record, 93.)

9

The answer sets up the following patents as a bar to the complainant:

Thomas G. Otterson, Nov. 4, 1862, Record, p. 148.
N. S. Gilbert, Sep. 1, 1868, " " 155.
C. H. Imlay, May 25, 1865, " " 159.
John Focer, June 12, 1866, " " 164.
Gillender & Bennett, Aug. 8, 1865, " " 161.
T. H. & S. A. Whitney, Re-issue, Dec. 28, 1869, Record, p. 165.
S. B. Rowley, Dec. 14, 1869, Record p. 158.
T. G. Otterson, Dec, 20, 1870, " " 176. 10
Others were referred to, but were not filed as Exhibits.

Of these patents, the only ones that Judge Woodruff seems to have regarded as requiring notice in this connection, were Gillender & Bennett's, Imlay's, Gilbert's, and Otterson's. (Record, p. 184.)

In the 4th of his conclusions, Judge Woodruff describes, with sufficient accuracy, the forms of these jars respectively; but he does *not* say that either Gillender 11
& Bennett's or Imlay's, as patented, accomplished what Mason in his patent declares is *one of the objects of his invention:* that is to say, the protection of the contents of the jar from injurious contact with the India rubber gasket. Gillender & Bennett's gasket was placed *on the top*

12 *of the mouth of the jar;* and the latter could not be tilted without bringing it in contact with the contents; and the same may be said of the Imlay jar, where the gasket was placed on a flange *inside of the mouth of the jar;* and certainly it can hardly be urged that either of these patentees, after discovering that the effect of the gasket, *where they placed it,* was to spoil the contents of the jar, could change its position, and place it where Mason placed it, where it could do no mischief, without being responsible to him for the benefit which they had derived from
13 what he taught them, simple as it now seems to be, even admitting that Judge Woodruff was wrong when he found that Mason antedated them all.

In the case of Otterson, while the gasket was out of the reach of the contents of the jar, and his cover, overlapping the mouth, pressed upon it, his reliance to perfect the joint of the cover was the atmospheric pressure, when the contents of the jar, after a preliminary heating in the process, becoming cool, there was a partial vacuum produced, and it was possible to remove the clamp which
14 he describes, and which had been used in the first instance. So in the case of Gilbert, whose gasket was placed like Otterson's. He had a contrivance operating as a clamp, and which has long since been forgotten. These contrivances, Judge Woodruff calls "a species of clamp." How far, had Gilbert and Otterson known of Mason's thin metal screw, either would have been authorized to appropriate it in lieu of their own clumsy contrivance, may well be doubted.

Nor can it be said that Mason's invention was a mere
15 aggregation of old elements; on the contrary, each of the elements is essential to the effect aimed at.

What Judge Woodruff says, here, however, is only by way of a grave doubt, against which we may fairly set, without disrespect to a most able and enlightened

Judge, whose memory is cherished by all who had the honor of knowing him, the fact that after a review of the very objections which Judge Woodruff suggests, the Commissioner of Patents reversed the decision of the Examiner, and gave Mason the Letters Patent now in question. (Record, p. 89.) 16

But it must not be forgotten, that when Mason perfected his invention, as it is now patented, in 1859, neither Gilbert's, in 1861; Otterson's, in 1862; Imlay's, in 1862; nor Gillender & Bennett's, in 1865, were in existence; and the vice of Judge Woodruff's opinion is, that he seems to ignore these dates and treats Mason as an inventor who had done nothing more than combine the elements which the inventors here-named had given him. Whereas, the proper construction to be given to the specification in which Mason refers to them, is to paraphrase it, as though he had said, "if you place the gasket on the top of the mouth it will be in contact with the contents; if you place it on the inside of the jar, the same result will be produced; if in place of my screw ring, you use the clamp, or clamps, you will have a clumsy contrivance, as well as a costly and inefficient one; therefore, follow my directions, which will keep you clear of all these difficulties." 17 18

Assuming, then, that Mason was the first and original inventor of the combination described in this patent, of May 10th, 1870, we propose to enquire whether he forfeited his right to a patent, either by

1. Laches.
2. Abandonment.
3. Or by the invention being on public sale, or in use with Mason's knowledge and consent for more than two years prior to his application, which would be prior to the 15th January, 1866. 19

20 1. "LACHES."

"Mere delay in taking out a patent, unaccompanied by public use or sale of the thing, with the consent and allowance of the patentee before his application, however long may be the interval between completion of the thing and the application, will have no effect upon the patent." 3 *Sum.*, 519.

"You cannot contend that, if a man were to keep his invention shut up in his room for twenty years, that circumstance merely would deprive him of his right to obtain
21 a patent for it."

Cresswell, J., 1. *Car & Kirw.*, 587.

The 3d of Judge Woodruff's conclusions is, (Record p. 184,) "That at the time last aforesaid (when Mason had his jars manufactured in 1859), the said patentee contemplated procuring a patent for his said invention, and there is *no affirmative evidence that he ever relinquished that purpose*, except that for nine years he did nothing toward the execution of such a purpose."

22 Now, may it not be said that if there was no obligation on him to take out a patent when he perfected his invention, his failure merely to do so ought certainly not to prejudice him.

But the Judge goes on:

"He suffered the moulds which he procured for the original making of such jars to remain unused at the glass factory (where his jars had been blown and formed) without claiming them; and the proprietor (in 1867) after
23 eight years, not knowing where to find the patentee, sold them, not able to pay storage upon them, and nothing more was done in this matter of manufacturing such jars by the patentee down to the time of his application for a patent," January 15th, 1868.

But ought this, which to the Judge's mind seems to

have supplied the want of affirmative evidence that 24
Mason relinquished the purpose of procuring a patent, to prejudice him, when he did apply? Let us analyze what the Judge says.

In the first place, the jars were cast in very heavy moulds, eight pieces of iron forming, when put together, three pieces (Record p. 25), into which a mass of plastic glass was placed, which the workman, by blowing, expanded into the shape cut in the mould. The invention of Mason in 1859 might have been theoretically perfected, but actual trial could alone demonstrate its prac- 25
ticability; and this could only be done in a glasshouse, by skilled hands, Mason himself not being of the craft.

It can hardly be supposed that Judge Woodruff meant to say that, because Mason, having proved practically that his jar was a success, by actually blowing it in the heavy moulds which he had caused to be made for the purpose and fitting it up, left them in charge of the proprietor of the glasshouse, to which he must have carried them again whenever he got ready to patent and prose- 26
cute his invention—therefore he was guilty of Laches: and yet his words might have such a construction.

Whether he left them in Jersey City or brought them over to New York and then stored them, or kept them in his own house, could make no difference. The question is not what he did with the moulds, without which he could not have tested his invention; but whether he was obliged, having tested it, to have gone on and prosecuted it.

27

Neither can the sale of the moulds as old iron for storage affect the question. Had Mason himself sold them, it might, under certain circumstances, have been different. For aught that appears to the contrary, he was ignorant of their sale and, most probably, believed

28 them in as safe custody as if he himself had them, awaiting the time when he would be ready to take out a patent.

"Nothing more was done by the patentee," says Judge Woodruff, (Record, p. 184,) "in the matter of manufacturing such jars by the patentee down to the time of his application of a patent," on the 15th January, 1868.

But, surely, there is no inference to be drawn from the fact prejudicial to the patent, bearing in mind that there
29 was no obligation on Mason to go on and manufacture. He was not a manufacturer. He had no factory. It might have been different, had he carried on the manufacture of jars, or glass, or had facilities for doing so; when it might be argued that he had cast this invention aside as worthless, and had himself melted up his moulds as old iron. But this is not the case here.

It is submitted then, that Judge Woodruff's third conclusion does not bear analysis, as we have here quoted it.
30

In another part of his opinion, one of the circumstances that seems to have influenced Judge Woodruff, in his conclusions, is thus stated, (Record, p. 186.) "He actually applied for and received another patent. He apparently applied himself to a totally different subject, so as to indicate that for some reason he did not regard this device worthy of further attention until either the ingenuity, skill, judgment and capital of others applied to the manufacture and sale suggested to him that the al-
31 leged invention had value."

Now, Mason was an inventor, an inventor as we shall see who had especial reasons for biding his time; and is it quite fair to require him to be idle in the interval, in order to avoid affecting the validity of his patent when he was ready to apply for it?

But in another of the Judge's conclusions, the 8th, 32
when he returns to the subject in connection with the question of abandonment, he says what may be proper to be noticed now.

"There was no reason for this delay; if Mason entertained any purpose to pursue the invention or patent."

Here, we think Judge Woodruff overlooked most material testimony, which, even if the above analysis of his 3d conclusion is not sound, it is respectfully submitted, amply and satisfactorily explains and vindicates the delay. 33

REASONS FOR MASON'S DELAY.

Mason had patented many things, and had sold his patents to a certain Mitchell & Bennett for $30,000; two thousand dollars in cash and $28,000 in notes, falling due in succession, secured by mortgage on the patents themselves. Some of the notes falling into the hands of L. R. Boyd, the mortgage was foreclosed and the title to Mason's patents became vested in Boyd, (Record, pp. 66–67.) *To these patents, the invention of* 1859 *was subor-* 34
dinate; and had Mason then taken out a patent, he would have been dependent on others for the right to use it; and he was so advised by his counsel, W. P. N. Fitzgerald. (Record p. 86, Int. 431.)

It appears by the testimony in more than one place, that of the $28,000 of notes received from Mitchell, Mason realized very little. On one occasion he got $1,500 for $15,000 of them, (Record, p. 84,) and traded away two or three thousand dollars in addition; and when he sub- 35
sequently called upon Mr. Fitzgerald with a view to apply for a patent for his invention of 1859, although the patents sold to Mitchell & Bennett, and the existence of which had in the first instance restrained him, had not expired, he was told that the parties who were then the hold-

ers of the patents had no equitable title to them, because they had not complied with the agreement or contract under which they were sold (Record, p. 87). Fitzgerald having now promised to apply for a patent for the invention of 1859, Mason waited for him some time, and until, hearing that he had died in Washington, he applied to Van Santvoord & Hauff, Patent Solicitors, in New York, who made the application, and the patent now in hand was subsequently obtained. Fitzgerald's health was very poor about this time, and he died in 1867.

So far, then, from there being no reason for Mason's delay, we thus see that there was a most substantial one; and instead of having to rely, in this connection, upon the fact that there is, in the language of Judge Woodruff, no affirmative evidence that Mason ever relinquished his purpose of applying for a patent, there is positive evidence that he not only never abandoned it, but that his delay in the first instance in applying was owing to the advice he received from the lawyer in charge of all his patent business; and the subsequent delay, after he had determined to apply was due, not to any laches of his own, but to the delay of Mr. Fitzgerald and his subsequent death. The importance of this testimony, in this aspect of the case, makes us insert it, here, at length.

Mason was one whose conduct warrants a departure from the rule that prevents a party from cross-examining his own witness, (1 Greenleaf's Evidence, Redfield's Edition, pp. 490–491.) The complainant had to rely upon him for facts that were within his knowledge, after Fitzgerald's death, exclusively; and when he was examined in the interference case already referred to, he had testified as it was only natural to suppose he would testify again. But, in the interval, he had become interested as the superintendent of a metal factory, at Camden, New Jersey; (Record, 77,) and when examined as a witness in

the present case, he peremptorily refused to testify; and 40
when made tractable by an attachment, (Record, 76,)
manifested a temper that was as pitiable as it was im-
proper. Hence, it became necessary to refer to what he
had sworn to on a former occasion. The testimony now
quoted is at pp. 86–87 of the Record, 431 R. D. Q.

Allow me further to refresh your recollection by ask-
ing you if you did not also testify in the Rowley case, as
follows, in answer to a question. "State what conversation
took place between you and Mr. Fitzgerald in reference
to such jars (meaning the jar you took to him in 1859), 41
and state what it was? Answer. There was a conversa-
tion between Mr. Fitzgerald and self, in reference to the
jar; the conversation was in the summer of 1859; con-
sulted Mr. Fitzgerald about getting a patent for the im-
provement; Mr. Fitzgerald informed me that it was a
good improvement and worthy of a patent, and had no
doubt he would get me a patent for it; but if I should
succeed in getting a patent for it, I could not use it, as it
would infringe other patents which I had then obtained,
and which I had given an exclusive license to other par- 42
ties to manufacture, and advised me not to get it patented
at present." A. Well, I don't recollect much about the
details of the conversation, but I think there was some
such conversation with Mr. Fitzgerald.

432 R. D. Q. Will you swear that you did not, on the
Rowley suit, testify as enquired in the last two interroga-
tions?

A. I will not, sir.

433 R. D. Q. Having reference to your answers to re-
direct 428 and 429 questions, permit me to refresh your 43
memory, if you did not also testify on the Rowley case,
as follows:

Q. "Had you any other and subsequent conversations
to these, with Mr. Fitzgerald, with reference to such im-
provements; if so, under what circumstances?

44 A. "The conversations which I had referred to in my former answer, took place prior to the year 1866; in 1866, I called to see Mr. Fitzgerald in regard to taking out a patent for this improvement in jars; this time he stated, as he had stated before, that to work this improvement I must necessarily infringe the patents I had already obtained; but he advised me to get out a patent for the improvement, for his opinion was that the parties who were then the owners of my patents had no equitable title to them, because they had not complied with my agreement, or
45 contract, under which they were sold; the conversation, in thinking over, took place between Mr. Fitzgerald and myself in 6th Avenue, and was in the latter part of 1865, and not in 1866; we had other conversations from that time to the spring of 1867, or early in the summer; on several occasions I told him I would get out a patent as soon as I could conveniently do so."

A. I don't recollect now in regard to this matter; I had several conversations with Mr. Fitzgerald along the time referred to by counsel, and may have had some such
46 conversation as he speaks of, but I have no recollection of it.

434 R. D. Q. Will you swear that you did not so testify in the Rowley suit?

A. No, sir.

We have reversed the order of questions, and will now return to 430 R. D. Q. (Record 86.)

430 R. D. Q. Allow me to refresh your recollection, by asking you if you did not testify in the Rowley case, as
47 follows: "State when, in 1867, you were enabled to proceed with your application? A. I called on Mr. Fitzgerald, in the early part of 1867, with the papers, and asked whether he would not make the application for my improvement for jars; he told me he would do it as soon as he felt a little better, and said he would call and see

me and let me know when he could do it; the last time 48
he called on me, which was in the summer or late in the spring of 1687, he was going out of the city, and when he came back would see if he could not get out a patent on the improved jar; relying upon the promise, I waited for months, and when I did hear from him, I heard he was dead; that he had died in Washington; I then went to Messrs. Van Santvoord & Hauff, of this city, and made the application in January, 1868, for a patent on the improvement."

A. I don't recollect what I testified to, on the question; 49
but I do recollect having conversations with Mr. Fitzgerald, and I recollect I waited some time for him to take out a patent; and I recollect, after hearing of his death, I went to Messrs. Van Santvoord & Hauff, and applied to them, and probably it was in 1865 or 1866; that is about all I recollect about it."

When, subsequently, in R. D. Q., 432, Mason was asked whether he would swear that he did not so testify in the Rowley case, his answer was, "I will not, sir."

50

The facts, thus testified to by Mason, in the re-direct examination are to be gathered, here and there, equally well, perhaps, in the long examination of 446 interrogatories to which he was subjected; 136 of which produced no other effect than to render an attachment for refusal to answer necessary. We have preferred, however, extracting at length the 436th, 431st and 433d questions and answers, as presenting, in a condensed and continuous form, Mr. Mason's evidence in this connection.

And we submit that it positively rebuts the idea of 51
laches, or of intentional abandonment.

NOTE BENE.—It must be borne in mind, throughout this case, that in 1858–59, and before those years, the preservation of fruit in glass jars, made air-tight, was a business

52 in its infancy. If not a matter that can be taken judicial notice of as a historical fact, the evidence that has been offered in the shape of patents, set up by the defendant, is sufficient to demonstrate it. There are eight patents, besides, Focer's and others, spoken of in the answer, between the 1st of September, 1861, and 20th November, 1870, all of which refer to the mode of making air-tight covers to glass fruit jars, and all of which wanted the features which have made Mason's combination perfected in 1859 valuable, and have gone out of existence.

53 A merit of which Mason cannot be deprived, is of having hit upon the true plan that has since been followed, and which has identified his name with the glass fruit jar all over the country.

That, with the invention perfected, he should have hesitated to patent it, when he would have become a tributary by doing so, was only natural. As the law which we have cited stood, he might have waited until the patents assigned to Mitchell & Bennett had expired.
54 But he ran the risk of others anticipating him with the public; and this brings us to the circumstances which induced him to make this application before it was too late.

REASON FOR PATENTING WHEN MASON DID.

This was because he saw that others might anticipate him, to his prejudice, if he kept his invention to himself too long; on this, his testimony is clear.

55 270 Q. Did you not, just previous to your going to Mr. Fitzgerald, in 1867, about taking out a patent for this improved jar, learn that a jar had made its appearance in the market substantially the same as your said jar, except that it had a tin instead of a glass cover, over the flange of which tin cover the flange of the screw-ring

engaged to hold such cover down over the mouth of the jar? (Record, p. 72.) 56

A. I did see such a jar sometime previous to my talking to Mr. Fitzgerald.

271 Q. Now, was not your communicating to him this fact, the reason, in your opinion, of his advising you, as he did, about your proceeding to patent your 1859 jar improvement?

A. My impression is that I did state to him that there was jars in the market like the jar I showed him in 1859, and he advised me, if I could, to get a patent; this is my impression about it now. (Record, p. 72.) 57

The cross-examination only strengthens the testimony-in-chief.

369 x Q. You have spoken in your direct-examination of having seen, previous to your application for the patent sued on, certain jars on sale resembling the jar put in evidence, and marked "Complainant's Exhibit O, J. G., Jr., Ex'r;" was it not because you saw those jars that you were awakened to the idea of securing a patent for your invention? 58

A. I think it likely it was.

370 x Q. Did not some of those jars have glass tops instead of tin tops?

A. I think I saw some glass tops before I saw the tin tops; that is my recollection of it just now.

371 x Q. Did these glass jars, having a glass cover, awaken you to the importance of securing a patent for your alleged invention, or were you only aroused to that by seeing the jar with the tin cover? 59

A. I was prompted by seeing the jar with the tin cover.

The defendants' counsel here pressed the witness to say that it was a jar called the "Hero," with a glass

60 cover, that prompted him, but without effect. Of this Hero jar, which, as it seems, had sometimes a tin and sometimes a glass cover (Record 111), more hereafter.

In this connection, it is to be remarked, that Judge Woodruff has fallen into a mistake in the 8th of his conclusions, he says:

"Others, having no connection with Mason, had produced and given to the public the benefit of the device he now seeks to claim, had devoted time and capital to its production and sale." (Record, p. 186.)

61

Now, the inference to be drawn from this, as regards what was in Judge Woodruff's mind is, that Mason, instead of moving in the matter on the first notice that he had of the danger he ran, waited until others had demonstrated the value of his invention, and then went forward to deprive them of their reward,—to reap where they had sown.

But the fact was not so. He saw a jar with a top secured in its place upon a gasket below the mouth of the
62 jar by a thin metal screw-ring, engaging in a screw on the neck of the jar; and seeing in this a sufficient approach to what he had done to warn him of other possibilities, he goes to his lawyer, in 1867—the same year, recollect—to see about taking out his patent; his lawyer promises and dies, and he then goes to another, and the patent is obtained.

It is respectfully suggested that as this case unravels itself in its voluminous testimony, it corroborates the
63 view that, at liberty to keep his invention to himself as long as he pleased, Mason proceeded to patent it within the two years, during which no purchase, sale, or use, without his knowledge or consent, prior to his application, could prejudice his right, or impair the validity of his patent when granted.

Further, in this connection, and having regard still to 64
what Judge Woodruff has said:

"It was not," he remarks, "until the several patents above specified had been obtained, (Imlay's, Gilbert's, Otterson's, and Gillender & Bennett's,) by others, and after Rowley, *in concert with Mr. Imlay, had engaged largely in the manufacture*, and they had been for *nearly two years* extensively sold; that Mason, nine years after his alleged invention, comes forward to claim the exclusive right to make such jars; if he might originially have claimed this he had slept too long." (Record, p. 186.) 65

Analyze this. In the first place, as we have already seen, the length of his sleep, in law, had nothing to do with the matter of his invention, kept, as it was, to himself.

In the next place, he had an all-sufficient reason for keeping it to himself.

In the next place, as is clearly shown, not one of the 66
four patents referred to by Judge Woodruff were for the same invention, and their existence, no matter what their date, could not prejudice him.

In the next place, the Commissioner of Patents had granted Mason his patent in the teeth of them.

In the next place, Mason's two years under the Act of 1839 began to run on the 15th of January, 1866, two years prior to the date of his application, and the agree- 67
ment under which Imlay and Rowley began to act *in concert*—an agreement of which there is no proof that Mason knew anything—and make the "Hero" jar, sometimes with a tin, and then with a glass top, *was not made until the 7th of March*, 1866! (Record, p. 151.)

68 Among the cases referred to by Judge Woodruff is the case of

White vs. *Allen*, 2 Fisher, 440, 455, 456.

In that case the invention, a revolving pistol, was reduced to practice in 1849 or '50, but the patent was not taken out until 1855.

The defence there was the same as it is here. The invention was subordinate to the invention of Colt, in whose service the patentee was, and during this time the patentee delayed his application; and it was held that
69 this was not abandonment. In this case, too, the invention had been perfected. The case of *White* vs. *Allen* is regarded, therefore, so far from being a case against the complainant, as directly in his favor. Nor is it believed that if Judge Woodruff nad more carefully examined the facts in the case at bar, and compared them with those in the case of *White* vs. *Allen*, the latter case would have been cited in his opinion. Of these facts Judge Fisher was not aware when the case was before him on the appeal from the Commissioner, and he cited the case.

70 Abandonment must result from intention of the patentee expressly declared or clearly indicated by his acts. And if the lapse of years between the date of his application and of his patent; *and if his own conduct can be fully explained on any other hypothesis*, they ought not to be imputed to an intention on his part to abandon his invention. (*McMillan* vs. *Barclay*; 5 Fisher, 199.)

Where a party has subsequently taken out a patent, the Court is not authorized to give effect to such a de-
71 fence (abandonment) to a charge of infringement, except in cases where the proof is clear and cogent. (*Wyeth* vs. *Stone*; 1 Story, 281.)

In the case of *Adams* vs. *Jones*, also referred to by Judge Woodruff, 1 Fisher, 527, the principle is recog-

nized that involuntary delays do not prove laches; and 72
although facts there differ from the facts in the case of *White* vs. *Allen* and the case at bar, the law is the same; that a delay not caused by laches will not affect the validity of the patent. In all cases the inquiry must be as to the *cause* of the delay, and if that is reasonable, as in the case of *White* vs. *Allen* and the one at the bar, the inventor is not prejudiced.

The case of *Ransom* vs. *The Mayor of New York*, is one of those referred to by Judge Woodruff (Record 73
186); but it is respectfully submitted that it is not applicable under the circumstances developed by the testimony in this case which have been relied on by the complainant. Certainly if Mason, after his invention in 1859, had allowed it's use in public for more than two years without applying for a patent, it would have been evidence of a dedication of his invention to the public. But the applicability of Ransom *vs.* the Mayor fails for want of just such proof of allowance on Mason's part.

In the case of *Sayles* vs. *The N. W. R. R.*, 2 Fisher, 74
523, there had been a delay of five years in the Patent Office and the facts were otherwise different from the facts in the present case. But the principle is well stated by Judge Drummond, where he says, p. 526, "The Patent Law looks with indulgence upon the delays which arise *from the circumstances of the parties* who may make an invention; and it is only when the invention is intentionally abandoned or neglected, or the patentees show by their acts that they have not done all they can do, that 75
the law declares that they shall not be protected in their invention."

A careful reading of the case of *Wood* vs. *Parker*, 1 Story, 590, cited by Judge Woodruff, has not enabled us to appreciate its application to the facts in this case.

76 ABANDONMENT.

Under the act of 1839, Section 7, "No patent shall be held to be invalid by reason of such purchase, sale, or use, prior to the application for a patent aforesaid, except on proof of abandonment of such invention to the public, or that such purchase, sale, or use, has been for more than two years prior to such application for a patent."

On this point, Judge Woodruff says, "He had aban-
77 doned the manufacture; his instruments of manufacture were lost, or had passed from his possession and control without an effort to reclaim them. Others, having no connection with him, had produced and given to the public the benefit of the device he now seeks to claim, had devoted their time and capital to its production and sale."

We have already shown that what the Judge relied on as proof of abandonment—the ceasing to manufacture, the
78 continuance of the moulds in the hands of the glass blower, and the want of effort on the part of Mason to get them actually into his possession, is susceptible of a very different construction; and it is not intended to repeat now, that which it is respectfully submitted is conclusive on this point.

Unquestionably, that cannot be regarded as an abandonment which was but the exercise of a right to select the time when a patent should be applied for, and when
79 there had been no advantage taken by the public of the opportunity which this reticence on the part of the patentee is supposed to have afforded; especially in a case, where, as soon as the inventor was led to apprehend by the exhibition of the article in a shop in New York, that any delay might prejudice him, he proceeded forth-

with to show, by his application for a patent, that the 80
invention had not been abandoned.

ALLEGED SALE OF JARS BY MASON IN 1859.

The second of Judge Woodruff's conclusions is as follows; "The proofs show that at the time last mentioned (1859), he (Mason) caused at least two dozen of such completed jars to be manufactured; that some of them were put into actual domestic use, for the keeping of preserved fruits, and others were put by the patentee on public sale and sold, and the proceeds of sale were re- 81
ceived by him; that such sale was made by the patentee for the double purpose of getting the money" therefor, and of trying to see if they would sell well. And Judge Woodruff refers to such supposed sale by Mason in what he says in the 6th conclusion about the Imlay jar, of which jar presently.

In the first place, what was the whole number blown?

Judge Woodruff fixes it at about two dozen. Mason 82
speaks of a second batch of jars; but this testimony, in which we will show that he was wholly mistaken, seems to have made no impression on the Judge's mind.

We propose now to show that there was no such sale of the Mason jar, in 1859, as Judge Woodruff seems to rely on, as one, at all events, of the grounds of his decision in the present case.

Moulds, who, himself, *blew the jars* (Record 22, Int. 76), and who counted them, and who was subjected to a rigid 83
cross-examination, says there were from 18 to 24.

Reed, who was a proprietor of the Jersey City Glass Works, and who, himself, *pressed the covers* of the jars, says there were from 22 to 24 only. (Record, p. 22.)

When Reed was asked what became of the jars, he

84 says (Record 23, Int. 14), "I think the number of about half-dozen was delivered to John L. Mason; there were either one or two taken away by Mr. John L. Brooks, the man who made the moulds; there was one kept by myself for several years; *I think the others were destroyed*, IN FACT, I KNOW THEY WERE DESTROYED.

15 Q. Were these jars that were taken away, and also the one that you kept, finished up complete, gasket and screw-ring?

85 A. I could not say further, whether they were or not; the ones that Mr. Brooks took away I did not see; it was a privilege granted Mr. Brooks to have a model made from any mould that he sent there, for himself, individually; I can't say, positively, if *the half-dozen* that Mr. Mason took away were fitted up or not; the one I retained myself Mr. Mason presented to me, with the cap and gutta-percha-ring; he insisted upon putting them together, and explained to me the utility of the improvement.

86 16 Q. What became of the jar and cover that you kept?

A. It was sold, sir.

17 Q. Under what circumstances?

A. To assist in paying my honest debts.

18 Q. What became of the moulds for the glass jar and cover?

A. I sold them, sir.

19 Q. Under what circumstances; for what reason, and about when?

87 A. They were sold in 1867; they were sold for the reason that I could not afford to pay storage on them; not knowing where to find Mr. Mason to deliver them to him at the time. (Record, p. 23.)

Mason then *had six jars*, one of which it is in evidence, (Record 64,) he gave to his lawyer, Fitzgerald.

There remained, then, *five* jars in his possession, with 88
which to establish a sale that would bring him within the scope of the law in regard to abandonment. Hardly enough, one would think, to put into actual domestic use, besides getting money for them by sales to test the market.

Following these five, and there were no more, what is the testimony? Let us see what Mason says, under the supposition that he is speaking of the five (Record p. 63).

89

177 Q. Please state what was done with those glass jars and glass covers after they were so made at the Jersey City glass works?

A. Well, they were taken away *I think, and used by myself.*

178 Q. What, if any use did you make of them, what did you do with them?

A. The first day I took some away; I really don't remember, but *I think* that I gave one to my lawyer, W. P. A. Fitzgerald, and I think *I took* the rest home of *the* 90
first lot.

179 Q. What did you give one to your lawyer, Mr. Fitzgerald, for?

A. I am not prepared, hardly, to say what for, but my impression now is, to show him the jar and see if I could get a patent on it, I think.

180 Q. Please state what became of the *other jars* which you say you took away *at the time you gave this to Mr. Fitzgerald?*

A. I DON'T REMEMBER. (Unquestionably, there is no 91
proof here of either sale or domestic use.)

181 Q. When did you take away any more that you recollect of?

A. Well, *I think* I took away another lot after that time.

92 182 Q. Are you so positive of this latter fact that you would swear to it?

A. I am *under the impression* that *I got a second lot* after the first three or four, *or half dozen.* (Bear in mind that this corroborates Reed's testimony as to the number that he gave him.)

183 Q. Please state what you did with them?

A. *I think I sold them.* (He is referring now to a second lot, not to the first.)

184 Q. How many were in this second lot?

93 A. *A few dozen of them:* I can't state how many; not a great many of them.

185 Q. How long was it after the first lot that you took away the second lot?

A. I don't recollect; a short time *I think.*

186 Q. To whom did you sell them?

A. I cannot now recollect.

187 Q. What caused you to sell a few jars in the manner in which you did on this occasion? (Still referring to the supposed second lot.)

94 A. *I don't recollect, except it was to have them tried.*

It is submitted that comparing this testimony with the positive statement of Reed, that after giving M. half a dozen of the jars—(agreeing with Mason here), and one or two to Brooks, and keeping one for himself, *the rest were destroyed;* and bearing in mind the doubting way in which Mason testifies throughout, it is impossible to believe that there was ever a second lot of several dozen given to Mason at the glass works.

95 Going further, Mason says, in answer to interrogatory:

196 Q. Were those jars fitted up before you took them from the Jersey City Glass Works, with flanged screw rings, and gaskets, including the one you took to Mr. Fitzgerald?

A. As my *memory serves me, I think* there were two or

three of them so fitted up, but *I am not at the present time clear upon that subject.* 96

197 Q. Was the one you took to Mr. Fitzgerald so fitted up?

A. My impression is that it was. ☞(But if the whole six were not fitted up, *they were in no condition for either domestic use or public sale*).☜

In Mason's cross examination, the subject of the second lot of jars and their sale was resumed; and without heeding the cautious uncertainty of the witness in regard to it, he is asked (Record pp. 79)— 97

347 x Q. It was after this time of the completion and perfection of the invention, and after your satisfaction therewith that you obtained a second lot of the same kind of jars and sold them, which jars you have spoken of in your direct-examination was it not?

A. Yes, sir.

348 x Q. Did you not sell the second lot for money?

A. "I suppose I did." And in answer to the next cross-interrogatory the witness says, "Well, *I suppose it was for the purpose of getting money and trying them.*" 98 (The second lot; not the first.)

In balancing testimony as to a second lot of jars, Judge Woodruff evidently found no difficulty in prefering the positive testimony of Reed and Moulds to the vague uncertainty of Mason; and in his second conclusion, says, "The proofs show that at the time last mentioned (1859) he (Mason) caused at least two dozen of such jars to be manufactured," and does not refer to the second lot at all. *His mistake was to suppose that Mason got all of the* 24 *jars of the first lot.* 99

Charles W. Gray (Record 35) states the number of jars blown to have been from a dozen-and-a-half to two dozen; and he says further, *that all that were good were*

100 *given to Mr. Mason*, and the rest were thrown into the waste barrel; which agrees with the testimony of Reed, that after giving half-a-dozen to Mason, which is the number Mason says he got, the rest were destroyed, or as Moulds says (Record 30), were used for "collet" to melt up again, with the exception of the two given to Brooks and the one retained by Reed.

It would seem, then, that the good jars were nine out of 24. The nine making what Mould calls "a small lit-
101 tle lot on a shelf (Record 20), standing all together," before Mason took them away, and of these nine, *but two or three were fitted up.*

Returning, now, to Mason's alleged second lot of jars of 1859. What became of them?

Mason says he sold them to make money and to try them, but when asked as to how, or when, or to whom they were sold (Record 85), he can recollect nothing. All that he remembers is that they were sold *by a man*
102 *named Robert Franklin*, at what price he cannot say—three or four dollars a dozen—or what sum of money was paid to him—and it turns out that Robert Franklin is dead.

We have given, at length, all the testimony relied on by the defendant in this connection, because we presume it was this that, in Judge Woodruff's opinion, justified him at the close of the 5th conclusion in making "The manufacture and sale of the said Mason in 1859" a sort
103 of makemight, when referring to the Imlay jars of 1865, "bearing upon the allegation that the patented invention was on public sale or in use for more than two years before the application for the patent now sued upon." And it is this testimony in regard to a second lot that could alone support the Judge's second conclusion.

But we allege that Mason never sold a single jar of those made in 1859, *and there is no proof that he did*, and this sufficiently appears from the testimony already referred to. 104

Whatever jars were sold, were sold by Robert Franklin. As this is made important by what Judge Woodruff has said in this connection, we give the testimony in full.

411 R. D. Q. Are you prepared to swear that you did sell any such jars in the year 1859? (See Record, Mason's testimony, p. 85.)

105

A. I am prepared to swear, as *I now recollect;* I did.

412 R. D. Q. Please answer the question without qualification, whether you will so swear or not?

A. I swear to the best of *my recollection* I did.

413 R. D. Q. Will you swear to whom you sold them?

A. No, sir; I can't now recollect.

414 R. D. Q. State the city, street, or number where you sold them?

A. They were sold in the city of New York; the street and number I don't know.

106

415 R. D. Q. Are you prepared to say when they were sold?

A. I think in June, 1859.

416 R. D. Q. How much did you get for the jars; are you prepared to swear to that?

A. I think, 3 *or* 4 *dollars a dozen;* I am not certain as to the exact price. (Unquestionably, this does not relate to the first lot.)

417 R. D. Q. Did you sell them to a jar dealer, or to an auction store?

107

A. I don't know, as I did not sell them personally myself.

418 R. D. Q. Why did not you sell them personally yourself?

A. Simply because I didn't want to; there was another party I thought would sell them as well as I.

100 *given to Mr. Mason*, and the rest were thrown into the waste barrel; which agrees with the testimony of Reed, that after giving half-a-dozen to Mason, which is the number Mason says he got, the rest were destroyed, or as Moulds says (Record 30), were used for "collet" to melt up again, with the exception of the two given to Brooks and the one retained by Reed.

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105

A. I am prepared to swear, as *I now recollect*; I did.

412 R. D. Q. Please answer the question without qualification, whether you will so swear or not?

A. I swear to the best of *my recollection* I did.

413 R. D. Q. Will you swear to whom you sold them?

A. No, sir; I can't now recollect.

414 R. D. Q. State the city, street, or number where you sold them?

A. They were sold in the city of New York; the street and number I don't know.

106

415 R. D. Q. Are you prepared to say when they were sold?

A. I think in June, 1859.

416 R. D. Q. How much did you get for the jars; are you prepared to swear to that?

A. I think, 3 *or* 4 *dollars a dozen*; I am not certain as to the exact price. (Unquestionably, this does not relate to the first lot.)

417 R. D. Q. Did you sell them to a jar dealer, or to an auction store?

107

A. I don't know, as I did not sell them personally myself.

418 R. D. Q. Why did not you sell them personally yourself?

A. Simply because I didn't want to; there was another party I thought would sell them as well as I.

108 419 R. D. Q. What reason was there for your not wanting to sell them personally yourself?

A. I don't know as I had any particular reason.

420 R. D. Q. Now, who did sell them for you, if you can recollect?

A. *A man by the name of Robert Franklin.*

421 R. D. Q. Is this the same Robert Franklin, who was sent to the insane asylum on Blackwell's Island within the past few years, and since died at that place?

A. He is.

109 422 R. D. Q. You recollect, do you not, Robert Franklin's testimony, given in the Rowley suit, respecting the jar in question, both on direct and cross-examination, and if so, did he state, or intimate, that he had ever sold any of said jars?

A. I don't recollect anything about what Mr. Franklin swore to.

The testimony of Franklin is at page 41 of the Record, and according to it, it would seem that the jars
110 sold by Franklin for Mason, *were sold in* 1857, two years before the jars of 1859 were blown in Jersey City. This testimony, however, it is proper to say was objected to as inadmissible.

Nowhere, in Franklin's testimony, does he say a word of any sales made by him, save those already referred to in 1857.

As the case stands, now, then, *there is a total absence of testimony to prove that a single sale was ever made of the jars blown at the Jersey Glass Works, in* 1859. And so far as the
111 allegation of such a sale affects either the question of abandonment, or sale for more than two years prior to the application for a patent, it falls out of the case, and so far as Judge Woodruff's conclusions rest upon it, they are unsound.

SALES AND USE PRIOR TO THE 15th JANUARY, 1866. 112

We have already quoted Judge Woodruff's 5th conclusion in part, we now refer to it again. "But this is not all," he says "Besides the jars of Gillender & Bennett and Imlay, made and patented before the application of Mason for this patent; there were, in the year 1865 in possession of Imlay *in actual domestic use several jars*, of the construction described in Mason's patent and of the construction now claimed to infringe the patent. Imlay was in the business of devising and constructing 113
fruit jars, and in that year had taken out a patent for a fruit jar above referred to. *It is not distinctly and in terms proved that he made those jars like the patented invention that was in use in his family. Nor is it proved how otherwise they were made.*"

Now it is submitted, that the want of this proof is the misfortune of the defendant on whom is the burden of proof, to make out a case against the *prima facies* of the patent.

114

The burden of proof is always on the defendant who sets up such sale or use, and he must show it to have *been with the knowledge and consent of the inventor and have been public in the ordinary way of public sale or use of a machine, and not to have been a use for the mere purpose of experiment.* (*American Hide Co.* vs. *American Tool Co.;* 4 Fisher, 291; *Hussey* vs. *Bradley;* 2 Fisher, 375.)

Judge Woodruff, no doubt, refers to the jars in use in the Imlay family, upon which use the defendant must 115
rely, even supposing it to be a reliable ground, in making out his case. But is not this very indistinctness fatal?

Let us see further, however, in regard to the jars in use in Imlay's family:

The natural presumption would be that they were the

116 jars that Imlay patented; jars with a "stopper," as the patentee calls it, in place of what is known as a "cover." If they were the jars of Gillender and Bennett referred to by Judge Woodruff, then they, as well as the Imlay jar, were not the jar of Mason as has been already shown, and the use of them in Imlay's family would not effect the Mason patent for a different invention.

What has been called the "Hero" jar seems to come nearer to what the witness refers to than any other. This jar is said to have been completed about the middle
117 of July, 1865. (Record 121.) Now, the name of Hero was applied to metal, tin, top jars, as well as to glass top jars (Record 111), where in answer to R. D. Q. 84, Rowley says that "metal top" has reference to "Hero" jars.

But whatever may be the proper description of the Hero Jar, or the jar used in Imlay's family, let us see the nature and extent of their use.

William H. Imlay, a son of the patentee, produced a
118 jar, when he was examined as a witness, which he had had in his possession from July, 1865. It is the jar No. 29. (Record 121).

28 Q. You have stated that you saw in use in the City of Philadelphia in the latter part of 1865, Hero jars such as Exhibit No. 29; for what purpose were such jars being used at that time?

A. Household purposes.

29 x Q. When you say household purposes, do you mean that you saw a jar or jars with fruit in them in
119 the latter part of the year 1865?

A. I do.

30 x Q. Where did you see that jar or jars of fruit?

A. In Philadelphia, 327 Pine Street.

31 Q. Whose place was it?

A. C. G. Imlay's.

32 x Q. Do you mean at your father's house? 120

A. I did.

33 x Q. Did you reside there at that time?

A. I did.

34 x Q. How long afterwards?

A. Until the day he evacuated the premises; I can't tell when that was.

35 x Q. Where was this jar, or jars, kept in your father's house?

A. I*n the cellar.* (Record 123, cross-int. 35.)

36 x Q. When did you see that jar, or jars, containing 121 fruit, for the last time?

A. That I can't answer as to date, but I expected they were used up.

37 x Q. Were not these jars put up with fruit in *order to test the jars?*

A. Originally they were.

Another son, Newell Imlay, testifies in regard to this ja", and says (Record 127), that he saw in use *at home* in the latter part of the summer of 1865; some were 122 *in the cellar;* some *in the sitting-room*, occupied as an office by C. G. Imlay, at 327 Pine Street, Philadelphia. In the parlor occupied as an office the jars were on the mantlepiece.

40 Q. (Record 128.) Do you know who put the preserved fruits in these jars?

A. Mother, I should think; she was sometimes assisted by my father and brother when they were experimenting.

Now, it is submitted that the testimony of the Imlays' 123 amount to this, that they were engaged in experiments only, which were being made in the summer, fall and winter of 1865—experiments confined to the household, and unquestionably not such as would bring the matter within the scope of even Judge Woodruff's opinion, and

124 *proving a public sale and a use within the meaning of the law.*

But let us follow these jars, and see whether there was any transaction in connection with them that would amount to such a public sale and use.

Turn to the testimony in regard to those transactions of Rowley's "in concert" with Imlay, that had caused extensive sales of the patented article "for nearly two years." (Record 106.)

125

"The first business transaction," says Rowley (Record 105), "I had with him (C. G. Imlay) was in the winter or spring of 1866 (meaning, probably, winter of 1865 or spring of 1866); think, when he first came, it was in the winter. He came to my office, 16 & 18 North 31st Street, with a 'Hero' jar. I was in the lamp and jar business at the time."

As this date is not unimportant, we fix it by referring
126 to the testimony of Mr. Leavitt, Rowley's clerk and defendant's witness, who says (Record 96):

12 Q. "I became acquainted with him (C. G. Imlay) about January or February, 1866, at Mr. Rowley's store, Nos. 16 and 18 Fifth Street, in this city; he came there to see Mr. Rowley to get him to take hold of a fruit jar called the "Hero," which was like "Exhibit 2." He wanted Mr. Rowley to manufacture and sell the jar on a royalty under a license, and on the 7th March, 1866, Mr. Rowley entered into articles of agreement with him to
127 manufacture jars like "Exhibit 2" for him, at which time he gave Mr. Rowley a license, which license was to be an exclusive license for the manufacture and sale for the United States."

It is submitted that this testimony disposes of the

allegation that there was anything in connection with Imlay's relations with Rowley in 1866, which affects the validity of the patent of Mason. There is no evidence in the case that the transactions, referred to by Judge Woodruff, "when he says that Rowley's clerk testified, without contradiction, that, prior to 1868, Rowley had sold several thousand gross of such jars, were ever known to Mason; even admitting that such knowledge could have affected him. The date of the transaction," in concert" between Imlay and Rowley, seems to be conclusive. 128

The jars spoken of by the Imlays' are traced to Otterson, and are referred to his correspondence. It would seem there were probably only two of them. They were taken from the cupboard to be given to Imlay, having previously been in a small bedroom, and were kept by both Otterson and Imlay to test them, or in the language of Otterson, who was a workman in Rowley's service, "preparatory to manufacturing them in large quantities, or at least with that expectation," as was afterwards done under the contract of March 7, 1866. It can hardly be contended, however, that the testimony of Otterson shows such a public use as would invalidate the Mason patent, and there is not a particle of testimony that Mason knew of it. 129 130

We know not how we can better conclude this Brief, than by quoting from Judge Woodruff's opinion the next to its last paragraph. It concentrates what has gone before it, and enables us, we say it in all deference, to demonstrate its unsoundness as a judicial judgment, by showing the weakness of the grounds on which it rests. 131

"Nor, in my opinion, is it material to inquire whether Mason or Rowley did or could have obtained a patent for the combination in question. If an inventor, WITHOUT

132 SUBSTANTIAL REASON OR EXCUSE, ABANDONS *the use of his invention, and for nine years sleeps on his rights*, and in the meantime others, in good faith, employ their industry, skill and money in producing the same thing, and give the public the benefit thereof, putting it into extensive use on sale; such a state of facts not only warrants the inference of adandonment by the first inventor, but it also creates, as between him and the other, the same equity as would arise if such others had gone further and taken out a patent. Whether the device is patented,
133 or has gone into use without a patent, would make no difference."

The force of Judge Woodruff's opinion rests, of course, on the words we have underscored. If the party, however, abandons in the sense which the law gives to the words, it cannot be material whether his reasons are substantial or not.

The patent, however, when granted, makes a *prima facie* case for the patentee, and the burden of proof is
134 with the defendant to show such abandonment. (*Am. Hide Co.* vs. *Am. Tool Co.;* 4 Fisher, 299.)

To meet this, he has the fact that the invention perfected in 1859 was not patented until May 10th, 1870, upon an application not made until January 15th, 1868.

Had this been accompanied with proof that with Mason's knowledge and consent the invention had been in public use or sale for more than two years before his application, there would have been a much better defence than has been made. (*Am. Hide Co.* vs. *Am. Tool Co.;*
135 4 Fisher, 299.)

But there has been no such sale or use proved, either within or prior to the two years.

The lapse of time between the perfection of the invention and the application is all, then, that is left by way of defence. This we have shown by authority is not sufficient in law of itself to invalidate the patent.

But we have gone further, and shown that there was a valid and sufficient reason recognized as such by the Courts in the case of *White* vs. *Allen* for the delay that took place, and which saved the patent, when granted, from the effect of a defence founded on the delay. 136

If we are right in this view, the scope of Judge Woodruff's reasoning, which depends upon an abandonment *without reason or excuse* falls to the ground.

With regard to the delay, the sleeping on the invention, that has already been remarked upon.

In an appeal from Judge Woodruff's decision, it has been thought better to make this the text of the present Brief, rather than ignoring it to wade through the mass of testimony. 137

JOHN H. B. LATROBE,

For Appellants.

Fortsetzung folgt

United States Supreme Court

OCTOBER TERM, 1876.

No. 166.

CONSOLIDATED FRUIT JAR CO.

APPELLANTS,

VS.

JAMES T. WRIGHT,

APPELLEE.

Brief for Appellee.

BY

GEORGE GIFFORD.

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United States Supreme Court.

OCTOBER TERM, 1876.

THE CONSOLIDATED FRUIT JAR COMPANY,
Appellant,
vs.
JAMES T. WRIGHT,
Appellee.

No. 166.

The patent to Mason is void.

1st. Because he abandoned his invention before his application for the patent.

This he did in two ways:—

(*a.*) By himself selling and putting into public use articles containing the invention, between eight and nine years before he applied for a patent.

(*b.*) By a delay of nearly nine years after he made his invention before he applied for a patent, associated with the fact of the invention being in the meantime made and patented or put into public use by others.

2d. Because he forfeited his right to a patent under the 7th section of the Act of 1839, by his use and sale of the invention more than two years prior to his application for a patent.

Mason made the invention, which is the subject of the patent sued on, about the middle of the year 1859. This was proved by the Appellant.

Mason did not apply for his patent until January 15, 1868. This appears from the file-wrapper and contents of his application. See also Mason's answer to question 294, record, page 74.

FIRST POINT.

Mason's delay was not from inability to apply for a patent.

I.

By his own testimony it appears that Mason had funds enough and time enough, at almost any part of the above period of nine years, to take out his patent if he had been so disposed.

To substantiate this statement it is only necessary to refer to the following testimony of Mason himself :—

See Record, pages 78 and 79, cross-questions 339 to 344, inclusive; page 80, cross-questions 355 to 358, inclusive; page 143, cross-questions 361, 362, 363; page 84, re-direct questions 406 to 409, inclusive.

II.

It also appears, by Mason's own testimony, that he did not make any effort to procure a patent for his invention.

This is abundantly shown by his own language, as follows:—

See Record, page 80, cross-question 355; page 81, cross-questions 365, 366, 367.

III.

It appears, from Mason's own testimony, that between the time when he completed the invention and the time of his application for a patent therefor he applied for and obtained a patent for a garbage box.

This is sworn to by Mason himself, as follows:—

See Record, page 71, question 262; page 80, cross-question 354.

IV.

Mason had no idea of procuring a patent until he saw jars which had been manufactured by others.

This is substantiated by testimony of Mason:—

See Record, page 72, questions 270, 271; page 81, cross-questions 369 to 374 inclusive.

SECOND POINT.

According to the testimony produced on the part of the Appellant, the invention was completed by Mason, ready for use, and sold, and put into public use by him about nine years before he applied for a patent, which, in itself, constitutes a dedication or abandonment to the public.

Mason made and sold jars, himself, for profit, after he had completed the invention in 1859.

He took them from the factory in two lots. Of the first lot, he gave some to his lawyer and the rest he took home.
Page 64, quest. 178.

The testimony is, that the ~~first lot of~~ jars made by Mason were completed jars.—[Record, page 22, question 9; page 22, questions 10, 11, 12; also page 79, cross-questions 345, 346.]

Mason afterwards, and in 1859, obtained and sold a second lot, and for profit.—[Record, page 64; questions 181 to 185 inclusive; also page 79, cross-questions 347 to 351 inclusive; also pages 84 and 85, re-direct 410 to 416 inclusive.]

THIRD POINT.

Even if Mason's own sale and use, added to his delay of nine years, had not dedicated his invention to the public, the production and public use of the invention by others during the time of his delay would constitute an abandonment.

While Mason was thus sleeping upon his rights, other parties, more diligent than himself, produced, perfected, and put upon the market, fruit jars, embracing exactly the invention made by him.

S. B. Rowley, the Defendant in interest in this case, was engaged in publicly manufacturing and selling the kind of jars against which this suit is brought as early as April 1866.

He commenced to manufacture in March 1866.

Imlay applied to Rowley, in January or February 1866, to make the jars.

They two made a contract dated March 7, 1866, Imlay giving Rowley a license under his patent.

Imlay had with him one of these jars.

Rowley procured several different establishments to make parts of the jars for him in 1866.

In that year—1866—he made 150 or 200 gross, being 21,600 or 28,800 jars with glass tops, besides others with metallic tops. Prior to the commencement of the year 1868 he made and sold 250 to 400 gross, making 36,000 to 57,600 jars with glass tops, and, during the same period, he also manufactured and sold a much larger quantity of jars with metallic tops, but the same in construction. This, it will be remembered, was all done before Mason applied for his patent. And thus it appears that the public, before Mason applied for his patent, and as early as 1866, was in full possession of the alleged invention, and from sources entirely independent of Mason or his alleged invention.

See Record, deposition of William A. Leavitt, page 94 to 98; also deposition of Salmon B. Rowley, pages 105 and 106.

Imlay completed one of the jars July 15, 1865.—[Record, page 121, question 8.]

They were used of different sizes in Philadelphia in the latter part of 1865, which was even before Rowley commenced to manufacture.—[page 122, Record, question 18, 19; pages 122 and 123, questions 28 to 33, inclusive.]

FOURTH POINT.

To sustain such a patent would totally ignore the object and purpose of the patent law, and the principles on which it has always been administered.

It is true that delay in applying for a patent after the completion of an invention does not *per se* deprive the inventor of the right to a patent, because the statute does not specify any time within which the application must be made, but it is equally true that great delay before applying for a patent, after the completion of the invention, associated with the fact of the public in the meantime having become in possession of the invention from another source, will deprive an inventor, guilty of the laches, of a right to a patent. The inventor in such case delays at his peril of something intervening, that is, the invention being made and patented or publicly used by another, which, associated with his laches, will

deprive him of the right to the patent. If this were not so, then the patent laws would operate as a deception and a curse to the country, because then, one who had bestowed time, ingenuity and expense upon originating an invention and publishing it to the world by a patent, or putting it into public use, would be intercepted and cut off by the invention of another, who had allowed it to remain dormant after being completed.

Whenever the subject of the effect of long delay between the time of making an invention and the time of making an application for a patent therefor has come up, either in the Patent Office or in the Courts, the decisions have been uniformly in accordance with the policy of the patent laws; that is, that the inventor thus delaying does so at the risk of the public in the meantime becoming possessed of the invention from some other source. I have here coupled the Patent Office decisions with the decisions of the Courts, because both ought to be, and are understood to be, governed by the same principles: one is to decide what patents are to be granted, and the other is to decide what patents are to be sustained as valid after being granted, and therefore the same law should govern the action of both; otherwise the Courts would be needlessly occupied in reversing the decisions of the Commissioner of Patents by killing patents born in the Patent Office, or by ordering such to issue as the Commissioner had refused. A patent that ought to be issued ought to be sustained after being issued.

It has been the uniform practice of the Patent Office ever since its establishment, to refuse a patent to the first inventor where such inventor had been guilty of great delay between the time of his invention and the time of

his application for a patent, and where, in the meantime, the public had become in possession of the invention from some other source.

I will first refer to some early decisions, made by Judges on appeal from decisions of the Patent Office, and then, to recent decisions of the head of that office, for the purpose of showing what became and has continued to be the established practice of that office. The substance of these early decisions is recorded in notes in Law's American Digest, pages 146 to 149.

In 1858 Judge Morsell held that where a person made an invention in 1847, and did not apply for a patent until eleven years after, and a patent had been granted more than four years to another, the first inventor had lost his right to a patent. (Note 30.)

In 1859 Judge Dunlop held that where B made an invention in 1853, but took no steps to obtain a patent until 1859, and a patent had been granted in 1858 to S for the same invention, B, by his delay, had forfeited his right to a patent. (Note 41.)

Judge Dunlop, in 1861, held that long delay and gross negligence on the part of an inventor to give the public the benefit of his invention by promptly presenting it, after it is perfected, to the Patent Office, will work a forfeiture of his right to a patent. (Note 54.)

The Judge undoubtedly here meant a case where the public had become possessed of the invention from some other source.

The same Judge, in the same year, held that where an inventor, who first conceived the idea of an invention, did

not apply for a patent until about a year and a half after another had conceived the same idea, and made application and obtained a patent for the same invention, the former inventor, by his delay, had forfeited all right to a patent. (Note 58.)

By more recent cases it will be seen that the same practice in granting or refusing patents in the Patent Office, has been continued down to the present time. In 1873, in Vinton *v.* Pearce, Patent Office Gazette, Vol. 3, No. 23, p. 629, it was held that the first inventor who did not apply for a patent for nearly two years after another patent was granted for the same thing, lost his right to a patent.

Commissioner Leggett, in 1874, refused a patent to an applicant because he delayed three years and four months before applying for a patent, after making an invention, and in the meantime the invention was made and a patent for it was obtained by another.

Bradford *v.* Corbin, 6 Patent Office Gazette, 223.

Whenever the question of the effect of long delay on the part of the inventor in applying for a patent has come up in the Courts, it has been uniformly held that if the public, during such delay, had become possessed of the invention, either by another patent, or a publication in a book, or by the invention going into use, such first inventor loses his right to a patent. Such decisions are in strict conformity with the policy and object of the patent laws, and any different administration of those laws would be in direct contravention of that policy and object.

In Johnson *v.* Root, 1 Fisher's Patent Cases, 369, the Court in charging a jury in reference to what had been done by the Plaintiff with his invention, said :—

> "If he had not perfected it, and did not use due diligence to carry it into effect, and in the meantime before he got his patent, somebody else had invented and used, and incorporated into a practical, useful machine, that mode of feeding, then he could not, by subsequent patent, appropriate to himself what was thus embraced in the former machine."

I will now refer to a case decided by this Court, and which has been a standard reference on this subject for the last fifteen years. It is the case of Kendall *et al v.* Winsor, 21 Howd., 322. In this case the policy and object of the patent laws, the relation between the public and the inventor and their respective rights are clearly set forth. For convenience, I will quote somewhat *in extenso* from the opinion. The Court say :—

> "It is the unquestionable right of every inventor to confer gratuitously the benefit of his ingenuity upon the public, and this he may do either by express declaration or by conduct equally significant with language—such, for instance, as an acquiescence with full knowledge in the use of his invention by others; or he may forfeit his rights as an inventor by a wilful or negligent postponement of his claims, or by an attempt to withhold the benefit of his improvement from the public until a similar or the same improvement should have been made and introduced by others. Whilst the remuneration of genius and useful ingenuity

is a duty incumbent upon the public, the rights and welfare of the community must be fairly dealt with and effectually guarded."

There is a large class of decisions of Courts to the effect that where an inventor, after making an invention and experimenting thereon, allows a long time to elapse before applying for a patent, and another person in the meantime makes the same invention and puts it into public use, or procures a patent for it for his own benefit, the first inventor loses his right to a patent.

Now, it is to be observed that, so far as the loss of the first inventor's right is concerned, it is totally immaterial whether the second inventor appropriates his invention to his own use by obtaining a patent therefor or whether he gives it to the public by putting it into use.

FIFTH POINT.

The facts proved in this case also show that independently of the question of abandonment, Mason forfeited his right to a patent under the 7th section of the Act of 1839, by making and selling the patented article for profit more than two years prior to his application for a patent.

Birdsell *v.* McDonald, 6 Patent Office Gazette, 682.

Blandy *v.* Griffith, 3 Fisher, 617.

Sanders *v.* Logan, 2 Fisher, 173.

McMillan *v.* Barclay, 5 Fisher, 189.
Am. Hide Co. *v.* Am. Tool Co., 4 Fisher, 291.
Sisson *v.* Gilbert, 9 Blatch., 185.
Agawam Co. *v.* Jordan, 7 Wall, 583.
McClurg *v.* Kingsland, 1 How., 202.
Pitts *v.* Hall, 2 Blatch., 229.
McCormick *v.* Seymour, 2 Blatch., 240.

GEORGE GIFFORD,
Counsel for Appellee.

Supreme Court of the United States.

OCTOBER TERM, 1876.

No. 166.

CONSOLIDATED FRUIT-JAR COMPANY, Appellants,

vs.

JAMES T. WRIGHT.

Points of Reply in behalf of Appellee to Appellant's Brief.

As Brother Latrobe's argument consists of an answer to the opinion of Judge Woodruff, I will submit what may be regarded as a direct reply to Brother Latrobe. By so doing, what may be regarded as important for this court to consider, can be reduced to great brevity and simplicity.

In Brother Latrobe's answer to the opinion of the judge he adopts the division made by the judge and quotes the parts, and proceeds to answer them severally. I will adapt my reply to those answers severally, and endeavor to show that Judge Woodruff was right and that Mr. Latrobe is wrong, which, in case I succeed, according to Mr. Latrobe's *plan* of presenting the case, will put an end to this appeal.

In part answer to Judge Woodruff's third conclusion, Mr. Latrobe, page 6 of his brief, says:

> "Now may it not be said that if there was no obligation on him to take out a patent, when he perfected his invention, his failure merely to do so ought certainly not to prejudice him?"

The answer to this is, that Judge Woodruff did not rest his conclusion on the mere failure of Mason to take out a patent. An inventor may have a right to a patent at the time he perfects his invention and may not then be under obligation to apply for a patent, yet his long delay and the danger of others making the invention and introducing it into use may have the effect of putting him under such obligation and subject him to the alternative, to wit: the loss of his right to a patent.

The judge says, that Mason suffered the moulds of his jars to remain where they were used for eight years and until they were sold by the party who used them to get rid of them, and that nothing more was done by Mason until he applied for a patent. Mr. Latrobe asks, ought this to be evidence that Mason relinquished the purpose of procuring a patent or to prejudice him when he did apply?

The judge does not say that that fact alone would deprive Mason of the right to a patent, but sets it forth as strong evidence showing that Mason did not retain his intention during those eight years to apply for a patent. It was the careless treatment of the subject, and the utter disregard of the moulds and evidences of his invention, which showed that Mason took no further interest in it and did not care what became of it.

The idea that Mr. Latrobe expresses at bottom of page 7, and top of page 8, of his brief, that Mason "most probably believed them in as safe custody as if he, himself, had them, awaiting the time when he would be ready to take out a patent," is preposterous. Would a man allow an article that he placed any value on, or cared anything about, to be left for eight years in the possession of a party under no obligations to keep it, and without any directions respecting it, or knowing or inquiring anything about it, and even not knowing, or apparently caring whether or not the party having it had used it to appropriate the alleged invention to his own use. His so leaving the moulds was worse than if

he had broken them up, because he left them exposed to use by others.

Mason's treatment of the moulds and the subject for which they were made and used, is very strong evidence that if he had ever intended to apply for a patent, he gave it up, and it is respectfully submitted that the third conclusion of Judge Woodruff is well founded.

Judge Woodruff, as quoted on the 8th page of the brief of Mr. Latrobe, states that Mason in his delay applied for and received another patent which tended to indicate that he did not regard this device worthy of further attention until he was reminded of it by the invention of others. To this Mr. Latrobe, bottom of page 8, asks, is it quite fair to require him to be idle in the interval in order to avoid affecting the validity of his patent when he was ready to apply for it?

He need not be idle, but when ready to apply for a patent, if he neglects to do it, and devotes his time to things which he deems of more importance, it must be at the risk of the consequences.

Mr. Latrobe thinks Judge Woodruff overlooked important testimony when he said there was no reason for making delay, if he entertained the purpose to apply for a patent; and on page 9, under the head of "Reasons for Mason's Delay," proceeds to state what he considers a justifiable reason for the delay. On page 10, he states as follows:

> "So far then from there being no reason for Mason's delay we thus see that there was a most substantial one; and instead of having to rely in this connection upon the fact that there is in the language of Judge Woodruff no affirmative evidence that Mason ever relinquished his purpose of applying for a patent, there is positive evidence that he not only never abandoned it, but that his delay in the first instance in applying was owing to the advice he received from the lawyer in charge of all his patent business; and the subsequent delay after he had de-

The answer to this is, that Judge Woodruff did not rest his conclusion on the mere failure of Mason to take out a patent. An inventor may have a right to a patent at the time he perfects his invention and may not then be under obligation to apply for a patent, yet his long delay and the danger of others making the invention and introducing it into use may have the effect of putting him under such obligation and subject him to the alternative, to wit: the loss of his right to a patent.

The judge says, that Mason suffered the moulds of his jars to remain where they were used for eight years and until they were sold by the party who used them to get rid of them, and that nothing more was done by Mason until he applied for a patent. Mr. Latrobe asks, ought this to be evidence that Mason relinquished the purpose of procuring a patent or to prejudice him when he did apply?

The judge does not say that that fact alone would deprive Mason of the right to a patent, but sets it forth as strong evidence showing that Mason did not retain his intention during those eight years to apply for a patent. It was the careless treatment of the subject, and the utter disregard of the moulds and evidences of his invention, which showed that Mason took no further interest in it and did not care what became of it.

The idea that Mr. Latrobe expresses at bottom of page 7, and top of page 8, of his brief, that Mason "most probably believed them in as safe custody as if he, himself, had them, awaiting the time when he would be ready to take out a patent," is preposterous. Would a man allow an article that he placed any value on, or cared anything about, to be left for eight years in the possession of a party under no obligations to keep it, and without any directions respecting it, or knowing or inquiring anything about it, and even not knowing, or apparently caring whether or not the party having it had used it to appropriate the alleged invention to his own use. His so leaving the moulds was worse than if

he had broken them up, because he left them exposed to use by others.

Mason's treatment of the moulds and the subject for which they were made and used, is very strong evidence that if he had ever intended to apply for a patent, he gave it up, and it is respectfully submitted that the third conclusion of Judge Woodruff is well founded.

Judge Woodruff, as quoted on the 8th page of the brief of Mr. Latrobe, states that Mason in his delay applied for and received another patent which tended to indicate that he did not regard this device worthy of further attention until he was reminded of it by the invention of others. To this Mr. Latrobe, bottom of page 8, asks, is it quite fair to require him to be idle in the interval in order to avoid affecting the validity of his patent when he was ready to apply for it?

He need not be idle, but when ready to apply for a patent, if he neglects to do it, and devotes his time to things which he deems of more importance, it must be at the risk of the consequences.

Mr. Latrobe thinks Judge Woodruff overlooked important testimony when he said there was no reason for making delay, if he entertained the purpose to apply for a patent; and on page 9, under the head of "Reasons for Mason's Delay," proceeds to state what he considers a justifiable reason for the delay. On page 10, he states as follows:

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termined to apply was due not to any laches of his own, but to the delay of Mr. Fitzgerald and his subsequent death."

Here Mr. Latrobe states the only reason he knows of which he thinks would justify Mason's delay, If these reasons fail then it follows that even Mr. Latrobe cannot discover anything justifying the delay, and I submit that both of these reasons fail.

1st. It was not the advice of Mr. Fitzgerald that caused Mason's delay in applying for a patent in the first instance. There is no evidence whatever that that advice had any such effect upon Mason's mind. But there is an abundance of evidence that his delay was from other causes. There is no evidence referred to by Mr. Latrobe, and none to be found in the record that Mason's delay was due to that advice. Mr. Latrobe seems to have regarded it as sufficient if it could be shown that such advice was given by Fitzgerald in 1859. This, it is submitted, is not sufficient. There is no evidence that Mason requested Fitzgerald to apply for a patent in 1859, or that he called on Fitzgerald for that purpose, or that the advice of Fitzgerald was the result of Mason's application to him *to make an application for a patent.*

On page 69 of the record, in answer to direct interrogatory 243, as to what conversation he had with Fitzgerald in 1859, Mason says:

> "As near as I recollect the matter, I took the jar to Mr. Fitzgerald for the purpose of showing it to him, and it may be for the purpose of talking with him in regard to taking out a patent; but what that conversation was I have no recollection."

And as to question 247, bottom of same page:

> "Now, how many years after you so left this jar with Mr. Fitzgerald, did you again consult him about it?"

He says:

> "I think it was a number of years, probably eight or nine years. It was about the time that he drew a specification for me for a garbage box, which I received a patent for."

The only advice Fitzgerald gave was that the *use* of the improvement would infringe other patents. He did not advise not to apply for a patent.

2d. It was not the delay of Mr. Fitzgerald and his subsequent death, as stated by Mr. Latrobe, which caused the subsequent delay of Mason, that is from in 1867 to January 15, 1868, that is his delay after he was advised by Mr. Fitzgerald to get a patent.

In answer to direct question 272, record, page 72:

> "You say in your 268th answer, that Mr. Fitzgerald took out all your patents; state the reason why, after his having so advised you to patent this 1859 jar, he did not proceed at once and obtain a patent on it for you?"

Mason says:

> "Well, I don't now recollect; I suppose because I didn't order him to do so. I suppose there were reasons at the time, but I don't recollect them now in particular."

At page 72, Mason testifies thus;

> "277. Q. Had you any reason or cause for not proceeding to obtain a patent on the improved jar of 1859, after Mr. Fitzgerald so unqualifiedly advised you to patent it? If so, state such reason or cause.
>
> "A. Well, I don't know as I had any reason or cause for not doing so.
>
> "278. Q. Then, it was not because of your fault or neglect that Mr. Fitzgerald did not proceed to try to obtain a patent for you on that jar, was it?

"A. I suppose it was all my fault. Had I given him the order to draw the specifications and paid the fees, I have no doubt the application would have been made.

"279. Q. Since you testify that you don't know that you had any reason or cause for not proceeding to obtain a patent after such advice received from Mr. Fitzgerald, are you prepared to swear that there was any reason why you did not then request him to proceed to take out such patent, and to pay him the fees required for the purpose?

"A. I don't now recollect that there was any reason further than that I was not ready just at that time.

"280. Q. State why you were not ready just at that time to proceed to obtain your patent, after having been so advised; and do you swear that you were not ready for such reason?

"A. Mr. Fitzgerald when he advised me to obtain that patent—we were talking also about getting a garbage-box patented; I went on and got him to draw a specification, and paid the fees for this garbage-box patent; and I thought after I got the patent on that I would get the patent on this jar, if I could. That is the only reason that I now recollect for not proceeding about this fruit jar."

At page 73, Mason testifies as follows:

"287. Q. Was there any trouble with Mr. Fitzgerald that caused him to delay in making application for you?

"A. I can't say as there was particularly, at the times that I talked with him, because he would have got out a patent for the jar instead of the patent for the garbage-box, if I so wished, at the time; but some time after, when I made up my mind to get out a patent, I waited for Mr. Fitzgerald, thinking that he would be the proper man, and, on inquiry, I found that he had died in the meantime; and I then went to another lawyer, a Messrs. Van Santvoord and Hauff, and they made an application for this patent.

"288. Q. How soon after first seeing Mr. Fitz-

gerald, in 1867, about taking out a patent for you on this improved jar, did you make up your mind to have it taken out?

"A. I think I talked with Mr. Fitzgerald on two occasions, and probably three; and I think it was on the second, probably on the second or third interview—it may be the first—that I had with Mr. Fitzgerald, as near as my memory now serves, the garbage-box and fruit jar were talked over at the same time. I made up my mind to make an application for a patent after I made my application for a patent for the garbage-box, as near as I can now state.

"289. Q. Please state why you did not make up your mind sooner, especially in view of your having seen a similar jar with a tin cover in market.

"A. I don't know as I can state hardly why I did not, excepting that I didn't care about doing it at that time."

In answer to a question respecting the tin-top Hero jar, and marked Exhibit O, Mason, page 76, testifies thus:

"I saw a jar like this sometime prior to my making the application for a patent, and I think sometime before Mr. Fitzgerald and I talked about getting a patent on the jar now in question.

"Q. Who was making this Hero jar at such time and putting it into market?

"A. Well, I don't know of my own knowledge, but I understood it was Mr. S. B. Rowley, of Philadelphia.

"Q. Was he introducing it, or was it already introduced? State how this was.

"A. I think it was already introduced, because I saw them on sale in the stores.

"Q. Was this the first knowledge you had of it, that is to say, of the jar being on sale in the stores?

"A. Well, of this tin-top jar, I think it was."

The testimony above quoted is all from the examination in chief. On his cross-examination, page 81, Mason testifies as follows, as to what he saw on market before applying for his patent:

"369 cross-Q. You have spoken on your direct examination of having seen previous to your application for the patent sued on, certain jars on sale resembling the jar put in evidence, and marked 'complainants Exhibit O, J. G. Jr., ex'r,' was it not because you saw those jars that you were awakened to the idea of securing a patent for your invention?

"A. I think it is likely it was.

"370 cross-Q. Did not some of those jars have glass tops instead of tin tops?

"A. I think I saw some glass tops before I saw the tin top; that is my recollection of it now.

"371 cross-Q. Did these jars, having a glass cover, awake you to the importance of securing a patent for your alleged invention, or were you only aroused to that by seeing the jars with the tin cover?

"A. I was prompted by seeing the jar with the tin cover."

He had also seen the glass-top jars before this, that is, before the time when he saw the tin-top jar. This, at page 87, he positively swears to thus:

"Q. What time elapsed between your seeing the glass top and tin top jars referred [to] in your answer to cross-interrogatory 370?

"A. I don't know that I can tell; it might have been a year; it might not have been over nine or ten months. I know it was some considerable time.

"Q. Are you prepared to swear to any particular time?

"A. No, sir, I am not, excepting that it was some considerable time before I saw the tin top."

He re-affirms it at page 88, thus:

"Q. Do you mean by those answers to say that you did not see the glass-top jars referred to, before you saw the tin top?

"A. I mean to say that I did see the glass-top jar before I saw the tin top; but I can't state the exact time within two, or three, or four months.

"Q. Will you swear positively that you saw a glass

top before you see a tin top fruit jar; and if so, what enables you to be able to so swear when your recollection is so imperfect respecting material matters which you have been asked about in your direct examination?

"A. I swear positively that I did see a glass-covered jar before I saw a tin-covered one. I saw it in Philadelphia."

Notwithstanding he was aware of the manufacture of both kinds of the Hero jar by others, before his conversation with Fitzgerald, he neglected to request Fitzgerald to make the application for the patent, and even says that after seeing these two kinds of jars he had not concluded to apply for a patent, and did not expect to apply for it unless he first got a patent for the garbage box.

The testimony referred to, taken in connection with the fact that Mason had abundant means to apply for a patent, which is not denied, more than justifies the conclusion of Judge Woodruff that "there was no reason for this delay."

The conclusion of Judge Woodruff, quoted by Mr. Latrobe on the 21st page of his brief, respecting the sales of jars by Mason in 1859, and which Mr. Latrobe thinks is not warranted by the evidence, I submit is fully sustained by the evidence.

First. There is no question but that about two dozen jars were made. The only question is, what part of them Mason had and disposed of. Reed says: "I think the number of about half a dozen were delivered to John L. Mason." He does not undertake to say with any certainty that no greater number was taken away by Mason. It is clearly proved that Mason took parts of them from the factory twice, which, in the testimony, are called the first and second lots. Mason, in his direct examination, testifies as follows, (page 64:)

"Q. What, if any, use did you make of them, or what did you do with them?

"A. The first day that I took some away I really

don't remember, but I think that I gave one to my lawyer, W. P. N. Fitzgerald, and I think I took the rest home of the first lot.

"Q. What did you give one to your lawyer, Mr. Fitzgerald, for?

"A. I am not prepared hardly to say what for, but my impression now is to show him the jar and see if I could get a patent on it, I think.

"Q. Please state what became of the other jars which you say you so took away at the time you gave this one to Mr. Fitzgerald.

"A. I don't recollect."

Not, as Mr. Latrobe has it, in capitals, page 23 of his brief, "I don't remember."

Now, it does not appear how many jars there were in this lot which he first took away from the factory, and it does not appear what became of the remainder of that lot after the one was given to Fitzgerald, except that Mason took them home, (Answer 178.) But it is certain that it was what remained of this lot which Mason said he did not remember what became of them after he took them home.

Page 64, Mason, in his direct examination, says:

"Q. When did you take away any more that you recollect of?

"A. Well, I think I took away another lot after that time.

"Q. Are you so positive of this latter fact that you would swear to it?

"A. I am under the impression that I got a second lot after the first three or four or half dozen.

"Q. Please state what you did with them.

"A. I think I sold them.

"Q. How many were in this second lot?

"A. A few dozen of them. I can't state now how many—not a great many of them.

"Q. How long after this first lot was it that you took away this second lot?

"A. I don't recollect. A short time, I think."

No witness says, and there is no testimony showing, that the jars which Mason took from the factory were all taken in one lot. The counsel who examined Mason for appellant undoubtedly understood that Mason took two lots from the factory, because, after Mason had answered Question 180, respecting the first lot, he asked him for the time when he took away any more.

It was this second lot of jars which Mason sold, and the testimony proving it is all one way and conclusive.

At page 79 Mason testifies thus:

> "Cross-Q. Was not your invention contained in the patent sued on completed at the time you speak of as having taken away the first lot of jars, one of which went to Fitzgerald, and if it was not so completed, will you enumerate what remained to be done to complete it?
>
> "A. It was all completed at that time.
>
> "Cross-Q. Were you not, at that time, satisfied with its completion and perfection?
>
> "A. I was.
>
> "Cross-Q. It was after this time of the completion and perfection of the invention and after your satisfaction thereof, that you obtained a second lot of the same kind of jars and sold them, which jars you have spoken of in your direct examination, was it not?
>
> "A. Yes, sir.
>
> "Cross-Q. Did you not sell the jars comprising this second lot for money?
>
> "A. I suppose I did.
>
> "Cross-Q. Was it not for the purpose of getting money that you sold them?
>
> "A. Well, I suppose it was for the purpose of getting money and to try them both.
>
> "Cross-Q. Do you mean by 'trying them' to see if they would sell well?
>
> "A. Yes, sir.
>
> "Cross-Q. I do not suppose you had any other object in trying them, as you say, than to see if

they would sell profitably and to get the profit, did you?

"A. I don't recollect any other now."

The counsel calling the witness, reinterrogates him, page 84, thus:

"Q. You say, in answer to cross-q. 349, that you suppose it was for the purpose of getting money and to try them both that you sold the jars which you think you took away the second time. Do you mean to testify that the trial that you made of the jars in 1859 consisted in the selling of a small lot, you not recollecting to whom you sold such jars?

"A. I mean to say that the selling of those jars was merely to try and see if they could be sold and to get the pay for those I did sell; that was all.

"Q. Are you prepared to swear that you did sell any such jars in the year 1859?

"A. I am prepared to swear as I now recollect I did.

"Q. Please answer the question without any qualification, whether you will so swear or not.

"A. I swear to the best of my recollection, I did."

Mr. Latrobe, page 27 of his brief says:

"But we allege that Mason never sold a single jar of those made in 1859, *and there is no proof that he did*, and this sufficiently appears from the testimony already referred to."

To sustain this proposition he adds:

"Whatever jars were sold, were sold by Robert Franklin."

This was a selling by Mason as the principal and by Franklin, as his agent. Mason testifies that he sold them through Franklin. This does not help Mr. Latrobe's proposition, but rather damages it, because the more agencies

Mason employed in the selling, the more publicity he gave to the selling.

It is, therefore, submitted that the second conclusion of Judge Woodruff, quoted on the 21st page of Mr. Latrobe's brief, and with which he finds so much fault, is fully warranted by the evidence. There is not a shadow of doubt respecting any fact therein stated, unless it be the actual keeping of preserved fruit in the jars, and that conclusion may be justified by Mason saying, in answers 177 and 178, that he took some of the jars home and "used by myself." Besides it is not supposable that purchasers of the jars made no use of them.

Mr. Latrobe, in reference to the opinion of Judge Woodruff, says:

> "His mistake was to suppose that Mason got all of the twenty-four jars of the first lot."

Judge Woodruff made no such mistake and came to no such conclusion, as the statement of the conclusion shows. The mistake is on the part of Mr. Latrobe in supposing that the 24 jars were what is called in the testimony the first lot, and in supposing that besides this Mason says there was another lot blown, called in the testimony the *second* lot. Whereas the two lots spoken of in the testimony, were only divisions of the lot of 24, or rather 22 to 24, as the witness Reed puts it.

There is no claim or pretense made by Mr. Latrobe that there was anything tending to excuse Mason's delay, except the bare existence of the fact that if he put the invention into operation it would infringe a patent or patents owned by others. It has already been shown that there is no evidence whatever showing that Mason's delay was *caused* by the existence of such fact, or that he was in any way influenced by the existence of such a fact. Proof of the bare existence of such a fact is not sufficient to prove that Mason's delay was caused by it, the thing to be proved. It

cannot properly be inferred from the existence of that fact that Mason was constrained therefrom to delay applying for a patent.

But, again: If his delay was on account of the existence of the fact that the use of his invention would infringe others' patents, it does not constitute a justifiable cause of delay or in any way excuse it. The bare fact that if a man puts his invention into use such use would infringe patents belonging to others has never, according to my experience, been held to be sufficient to excuse him from such delay in applying for a patent, accompanied by the invention and use by others, as would otherwise excuse his delay. Delay in applying for a patent from such cause is a *mere choice of a preferred way of making money*, and it does not at all arise from a man's necessities or belong to his inability to apply for and obtain a patent. The delay of White, in White *vs.* Allen, was not excused by the court by the bare existence of the fact that in case he had used his invention it would have infringed the patent of Colt. The circumstances of White, and his relation to Colt, were such that White needed his wages for the support of his family, and knew that if it should come to the knowledge of Colt that he, an employé of Colt, had presumed to have made an invention appertaining to fire-arms, he would have been discharged, and himself and family would have suffered from the want of means of support. It was the persuasion of White's two brothers, who were also in Colt's employ, that caused him to delay.

If the delay of Mason was caused by the advice received from Fitzgerald, that his invention could not be used without infringing patents belonging to others, (which is denied,) he only had to choose which would be the more profitable to him, to wit: to delay applying for a patent, at the risk of losing his right by others making and putting into use the alleged invention, or to obtain a patent, with a chance of its

being purchased by the owners of the prior patents, or of his acquiring a right to use under the prior patents.

To illustrate the absurdity of the necessity of making such a choice excusing an inventor from the consequences of his delay, such as the invention and use by others before applying for his patent, suppose B under the present law makes an invention, after which he ascertains that A had obtained a 17 years' patent one year before his invention which the use of his invention would infringe. B, thereupon weighs the chances of profits thus: Saying to himself on one hand, perhaps if I obtain a patent and my invention appears to be sufficiently useful, the owner of the prior patent will purchase of me the right to use it as an improvement on his invention, and the public will thereby have the benefit of it, or perhaps A, the owner of the prior patent would grant me a license on reasonable terms so that C could use it in connection with his invention. On the other hand, saying to himself: if I do not apply for a patent, but keep my invention a secret for 16 years, A's patent will expire and then I can obtain a patent for my improvement for 17 years from that date, and add A's prior invention to my improvement and have the exclusive right of manufacturing for 17 years from that date. Now the question is, shall such an inventor so delay applying for a patent without the peril of losing his right by the invention being made and put into public use by others during the time of his delay? *I submit that he cannot.* I understand Mr. Latrobe in substance to say he can. Suppose, further, that after B has delayed applying for a patent for five years from the time of his invention, C invents the same thing, and puts it into public use in connection with A's invention, and at the expiration of five years longer, B, ascertaining that the public are using his invention, applies for a patent, would he not in such a case have lost his right to a patent? Is he to be permitted by a delay

from a mere choice between ways of making money to be armed with power to enjoin the use of articles and the means of manufacture, cause sacrifice of investments which the public have become possessed of and not from *his invention*, but from sources independent of him? I submit that he is not, and that such a practice would be directly opposed to the policy of the law, and *discourage* what it was intended to *encourage*, and be a curse rather than a blessing to the country.

Mr. Latrobe, page 29 of his brief, quotes from the fifth conclusion stated by Judge Woodruff, and misconstrues its meaning. Mr. Latrobe treats the clause therein, which reads as follows: "It was not distinctly and in terms proved, &c.," as referring to the Mason patented invention, and submits that the want of this proof was the misfortune of the defendant, whereas that clause does not refer to the Mason patented invention, but to the Imlay patented invention. Judge Woodruff does not admit that there is any indistinctness in the proof that the jars in use in Imlay's family in 1865, were like the Mason patented jar; on the contrary, he says in this fifth conclusion that they were "of the construction described in Mason's patent, and of the construction now claimed to infringe the patent," and this conclusion is supported by the proof. The jars in use by Imlay were Hero jars with glass tops. They are fully described by Wm. L. Imlay, (question 4, page 120,) and one of the original jars made in 1865, is produced in evidence and marked Exhibit 29, (question 9, page 121.) It had been in the witness' possession ever since about July, 1865. This Imlay jar was an improvement on the Otterson. The witness, Wm. L. Imlay, testifies that the Hero jars, such as Exhibit 29, were in use in his father's family in 1865, for "household purposes," (question 28, page 122.) In his cross-examination, first part of page 123, he explains what was in the jars and where they were kept.

Newell Imlay testifies substantially the same as his brother, and at page 126, he explains that his father was desirous of getting right under the Otterson patent, so as to apply his screw ring to the Otterson jar.

This domestic use and manufacture by Imlay, preceded the negotiation between him and Rowley, and this testimony taken in connection with that of Otterson, who at the bottom of page 116, states that in the summer of 1865, he had Hero jars in practical use preserving fruits and vegetables, and the testimony of Leavitt, more than supports the correctness of the fifth conclusion stated by Judge Woodruff.

Mr. Latrobe, as he says, thought he could not do better than to conclude his brief by another quotation from Judge Woodruff's opinion, which he makes at bottom of page 33, and top of page 34, which he thinks enables him to "demonstrate its unsoundness as a judicial judgment, by showing the weakness of the grounds" on which it rests. I must confess that I have looked in vain for such a demonstration. Mr. Latrobe adds that if the long delay of Mason had been "accompanied with proof that with Mason's knowledge and consent, the invention had been in public use or sale for more than two years before his application, there would have been a much better defense than has been made," meaning I suppose that if to the defense of abandonment there had been added the defense of forfeiture under the 7th section of the act of 1839, there would have been a stronger defense, leaving out the fact that there was such public use and sale with Mason's knowledge and consent, and even by his procurement, in having the jars manufactured, distributed for use, and sold in 1859.

The proof of the two defenses is full and complete; one is his long and unreasonable delay accompanied by the fact that the alleged invention was produced by others not coming from him and manufactured and put into public use during that delay; the other is for-

feiture of his right to a patent, if he ever had any, under the 7th section of the act of 1839, by the alleged invention being in use and on sale more than two years prior to his application for a patent, not only by his consent and allowance, but by his actual procurement.

If this Mason patent could be sustained, then every person who might be using one of the jars of the many thousand manufactured by Rowley, more than ten years ago, would be made liable as an infringer.

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